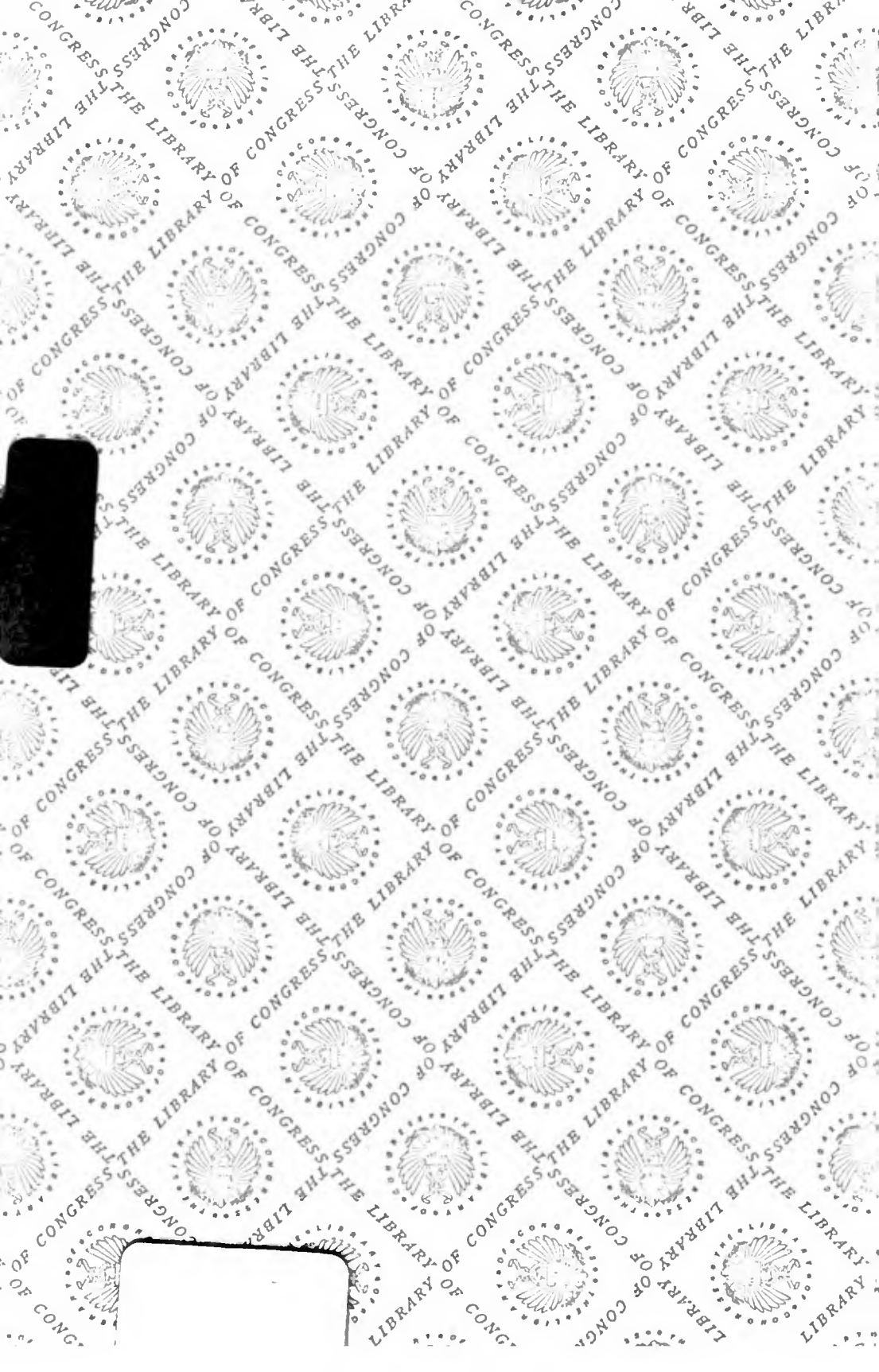

REPRESENTATION FOR THE DISTRICT OF COLUMBIA

HEARINGS

BEFORE THE

SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS

OF THE

COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES

NINETY-FIFTH CONGRESS

FIRST SESSION

ON

PROPOSED CONSTITUTIONAL AMENDMENTS (H.J. RES. 139, 142, 392, 554, AND 565) TO PROVIDE FOR FULL CONGRESSIONAL REPRESENTATION FOR THE DISTRICT OF COLUMBIA

AUGUST 3, SEPTEMBER 14, 21, OCTOBER 4 AND 6, 1977

Serial 35

Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE

22-873 WASHINGTON : 1978

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REPRESENTATION FOR THE DISTRICT OF COLUMBIA

WEDNESDAY, AUGUST 3, 1977

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 9:15 a.m., in room 2141, Rayburn House Office Building, the Honorable Don Edwards (chairman of the subcommittee) presiding.

Present: Representatives Edwards, Drinan, Volkmer, Butler, and McClory.

Also present: Thomas P. Breen, counsel; Ivy L. Davis, assistant counsel; and Roscoe B. Starek III, associate counsel.

Mr. EDWARDS. The subcommittee will come to order.

The gentleman from Virginia.

Mr. BUTLER. Mr. Chairman, I move that the Subcommittee on Civil and Constitutional Rights of the House Committee on the Judiciary, permit coverage of this hearing in whole or in part by television broadcast, radio broadcast, and still photography, or by any such methods of coverage pursuant to committee rule 5.

Mr. EDWARDS. Without objection, the resolution is agreed to.

Today we begin hearings on resolutions introduced this session, which would amend the Constitution to provide full voting representation to the District of Columbia in the Congress.

We intend to hold several days of hearings—the next will begin soon after the Congress returns from the August recess.

The issue before this subcommittee is not new. More than 150 resolutions to provide congressional representation have been introduced since the District was established.

The 1960's and 1970's were the years of significant and sustained attention to this issue in the Congress. In 1967 and 1972, the House Committee on the Judiciary reported favorably House Joint Resolutions 396 and 253, recommending full voting representation. Neither resolution cleared the Rules Committee for action on the floor.

Most recently, this subcommittee held three days of hearings on House Joint Resolution 280. This particular resolution was introduced by our distinguished colleague, Mr. Fauntroy in March 1975 and was cosponsored by over 100 Members. In December 1975, the full Committee on the Judiciary favorably reported House Joint Resolution 280, and for the first time, the issue of full representation went to the House floor for debate and vote.

That resolution, which is identical in langauge to House Joint Resolution 139 and 142, being considered by us today, called for

full representation in the Congress. The resolution, as reported, was never voted on by the full House; instead an amended version which provided for one Representative in the House, and enabled Congress to provide by law for full voting representation in both the House and Senate, failed to secure the necessary two-thirds vote.

In 1975, as we approached the 200th anniversary of this country, witnesses before this subcommittee, speaking on behalf of national organizations and the residents of the District, led by our distinguished colleague, Walter Fauntroy, spoke of the need to "mend the crack in the Liberty Bell." They reminded us that although they were citizens of the United States subject to all of the obligations of citizenship, their full voice remains silent in this Congress. They reminded us that it was not until 1964 and the ratification of the 23d amendment that District residents were eligible to vote for election for the Office of President and Vice President. They reminded us that for over 100 years, officials of the District were Presidential appointees and that not until January 1975, did the elected District government become operational. Finally, they reminded us that it was not until 1971 that District residents were represented in the House by a nonvoting Delegate.

A broad cross section of Americans endorse full representation for District residents. Their belief that the District have a voice in national affairs was most recently expressed in the swift ratification of the 23d amendment. The administration's emphasis on human rights throughout the world, and endorsed by the American people, is a mandate to this Congress to, at last, provide full representation to the residents of the Nation's Capital.

I now yield to the gentleman from Virginia, Mr. Butler.

Mr. Butler. Thank you, Mr. Chairman. I would like to join in welcoming our distinguished witnesses once more.

I am certainly anxious to heard the opinions of these gentlemen on the relatively new language which has been introduced this year by the chairman. The language makes a significant departure from the approach we took last year.

I have yet to decide if the language accomplishes the result intended, and at the same time is constitutionally sound.

This subcommittee is the first, and probably the most important step in a lengthy procedure which the Constitution has established for the amendment process. I am pleased that we are beginning reconsideration of this issue and I anticipate a very interesting series of hearings and debate.

I intend to listen with interest to these, and to several other witnesses who will be testifying on this issue after the upcoming recess.

Mr. Chairman, I would like to also note the absence of our Democratic colleagues in the deliberation of this subcommittee. This is probably the most important single piece of work that this subcommittee will undertake, an amendment to our Constitution.

And I want to serve notice now, Mr. Chairman, that I am going to do everything I can to embarrass those people for their absence. If they don't want to participate in this deliberation, they ought not to participate in the voting when we get to the nitty gritty of it.

And also, Mr. Chairman, I want to serve notice now that if you undertake to vote their proxies and they haven't been present, that I am going to protest this in every way that I can.

And I will ask that my colleague, the gentleman from Illinois, Mr. McClory join me in the protest.

I think it is important, Mr. Chairman, that we participate in the hard questions here by listening, by taking careful consideration of it, and that we be present both in the deliberations and the vote.

There are going to be some hard questions here, it seems to me.

I have made a number of mistakes in my career. I haven't often made the mistake of admitting them, and I am not about to do that now. But I have altered my view of the importance of representation for the District in the Congress of the United States.

I am not impressed by the argument of taxation without representation. In fact, I remind the witnesses that this is the stuff of which revolutions are made. It has never been very successful, even among the British. The argument of taxation without representation wasn't the one that carried the day for the insiders.

But it is government without representation. We are deeply involved in the process of the government of the District of Columbia. Every day it becomes clear to me how deeply involved the Congress is in that. And to continue to deny representation in the Congress is, in my judgment, an inappropriate thing for us to continue to do.

I think we have, as I have said before, exactly the situation which our Founding Fathers envisioned when they established the District of Columbia in our Constitution. But I am satisfied that the time has come for us to change that. Maybe this vision wasn't altogether accurate.

I am anxious that we arrive at something that will become law and part of our Constitution. So I am going to have the hard question for my friends today, as to whether you really want the issue or whether you want the representation. Because I cannot seriously believe that with the composition of the United States as it is today, a constitutional amendment requiring approval of three-fourths of the States will succeed. A constitutional amendment that would give the seven States that are smaller than the District of Columbia, the same representation in the Senate that the District of Columbia would have, is going to have hard, if not impossible, sledding in this country.

I would think that the more appropriate thing, the more reasonable thing, would be to have a constitutional amendment which would provide for representation in the House of Representatives only.

Therefore, I am going to ask my friends when they testify, if they have really considered the practicalities of this proposal.

Do you really want the issue or do you want the representation? Because I don't believe you are going to be able to accomplish the constitutional amendment which will change the representation of the Senate.

Mr. Chairman, I know I have spoken too long. But, since I was rather strong and vocal in my objections to this amendment last time, I felt it appropriate to explain to the subcommittee my present view.

I thank you and look forward to hearing from the witnesses.

Mr. EDWARDS. I thank the gentleman from Virginia for his very sincere statement, and I recognize the gentleman from Illinois, Mr. McClory.

Mr. MCCLORY. Thank you.

I just want to make a very brief statement, Mr. Chairman. I am a cosponsor of the House joint resolution for full representation for the District of Columbia.

I feel that the people of the District are entitled to and should have representation commensurate with the representation of a State or of equal areas of territory in which we do have representation in the House and Senate.

I, frankly, don't favor some kind of hybrid or some kind of partial, or some kind of watered down representation. I think it would corrupt our political system to develop some alternatives to the kinds of representative body we have in the House of Representatives, and the kind of area representation we have in the Senate.

I will be very interested in the testimony that we receive, and I will be interested in the further arguments against that kind of a solution. I am hopeful that we don't start off by arriving at some sort of a compromise because, frankly, I am not favorable to the thought of a hybrid or a watered down or a compromised kind of solution to this.

Mr. Chairman, I am very frank in stating my preconceived position which I have evidenced earlier in the previous Congresses with my vote. And to depart from that, I would have to be persuaded that my position is and has been wrong.

So, with you, Mr. Chairman, I look forward to the testimony in the hearings, and I hope with my colleague, Mr. Butler, that the Members will be present to hear the case, and will not be noticed by their absence and then have their proxies voted by others. I don't believe that will be the case. I will try myself, to be in attendance regularly.

Thank you.

Mr. EDWARDS. The gentleman from Massachusetts.

Mr. DRINAN. Thank you, Mr. Chairman.

I just want to commend everybody who has once again brought this to our attention. It was exactly 2 years ago that we had hearings and that we brought it to the floor. We didn't make the two-thirds. But I have the hope that with the perseverance of our colleague, Congressman Walter Fauntroy, and with the perseverance of Senator Birch Bayh, that finally we are going to remove the stigma of "The Nation's Last Colony" from the District of Columbia.

I yield back the balance of my time.

Mr. EDWARDS. The gentleman from Missouri, Mr. Volkmer.

Mr. VOLKMER. It is good to see my good friend Walter here this morning.

How is your leg, Walter?

Mr. EDWARDS. Our first witness this morning is the Honorable Walter E. Fauntroy, our distinguished colleague who has meritoriously represented District residents in the House as a nonvoting delegate since his election in 1970.

We are delighted to have you here, Walter, and you may proceed.

TESTIMONY OF HON. WALTER E. FAUNTROY, REPRESENTATIVE OF THE DISTRICT OF COLUMBIA, ACCOMPANIED BY JOHNNY BARNES, LEGISLATIVE ASSISTANT

Mr. FAUNTROY. Thank you so very much, Mr. Chairman and members of the subcommittee.

First of all, let me say how delighted I am to have this opportunity to come before you. I am very pleased to welcome both the former members of the subcommittee from the 94th Congress, and the new members who are joining with us and sharing with us in the exploration of this issue in the 95th Congress.

I am pleased to have at my side my legislative assistant, Mr. John Barnes, who has been in constant contact with the staff of the subcommittee, and who has been of great help to me.

Mr. Chairman, it is indeed a pleasure for me to appear before you today and to share with you thoughts and views on one of the most important matters affecting the citizens of Washington, D.C. and, I believe, the integrity of the democratic processes of our Nation.

I want to especially thank you, Mr. Chairman, for having the courage and the patience to initiate the process of bringing this matter before the House once again.

I believe we are on the threshold of an historic occasion. This hearing, I believe, marks the beginning of a new chapter in the history of Washington, D.C. as well as the history of the Nation.

Full voting representation for the District of Columbia during the 95th Congress is a reachable goal. It is a reachable goal if, as we have been told, we can expect the President of the United States, to bring his world quest for human rights home here to the Nation's Capital.

It is a reachable goal if the just and fair-minded Representatives in the House, who during the 94th Congress voted with a majority of the Members to enfranchise the three-quarters of a million Americans residing in the District of Columbia, are able to persuade just 21 additional Members to vote in favor of District of Columbia full voting representation.

It is a reachable goal if Members of the Senate follow the lead of Senator Kennedy and Senator Bayh and other cosponsors of the similar resolution in the Senate that was introduced just this year.

And finally, it is a reachable goal if the American people also decide that this simple case of democracy denied must, after nearly two centuries, be corrected.

It is, Mr. Chairman, a reachable goal in the 95th Congress.

It is only reachable, however, if those Members of the House and the Senate, who believe as I do, that this serious flaw in our democracy must be removed, if those members play an active role in convincing the unconvinced, in educating the misinformed, and in persuading the stubborn.

We must remind the President that of the 17 federal districts in the world community, only 2 other than Washington are not represented in their national legislatures. Surely, our Government is more progressive than the Governments of Brazil and Nigeria, for ex-

ample, which deny the residents of their federal districts representation in their national legislatures.

Surely, our Government is at least as progressive as that of England, France, and West Germany, whose residents of London, Paris, and Bonn are represented in their national legislatures.

Human rights is as important here as it is abroad. We must give our President that message, and he, in turn, must convey it not only with words, but with deeds as well, to the Congress and to the American people.

Those who agree with this effort to secure simple democracy for the people of Washington, D.C. must speak out to ensure that the Senate and House vote for the most enduring principle of our Government that "* * * governments are instituted among men, deriving their just powers from the consent of the governed."

Despite this tradition of representative government, Mr. Chairman, you know that District residents do not enjoy the same rights as every other American. They are relegated to the status of second-class citizens. They have no representation in the Senate of the United States, and they have only token representation in the House of Representatives.

The District of Columbia has no voting congressional representation despite the fact that District residents pay more than $1 billion every year in Federal taxes; despite the fact that the per capita tax payment for the District of Columbia residents is $77 above the national average, a payment only exceeded by seven States; despite the fact that the population of the District of Columbia is larger than that of 10 States, including Alaska and Delaware, Idaho, Nevada, Montana, New Hampshire, North Dakota, South Dakota, Vermont, and Wyoming; and despite the fact that District of Columbia residents, like all other Americans, have fought and died in every American war and conflict.

Like all other Americans, District citizens are subjected to Federal laws, yet the only representation available to District residents, is one nonvoting Delegate in the House of Representatives.

Are we to continue to say to District of Columbia Americans, like we said in the *Dred Scott* decision to another group of Americans, that you are less than whole persons in our eyes?

Are we to continue to espouse the virtues of democracy to the world and halt that democracy at the borders of the District of Columbia?

Are the gates to equality, freedom and independence to remain closed within view of the Washington Monument?

The responses are obvious and compelling. They are more compelling during this Congress and with this administration than ever before. Mr. Chairman, we are, I believe, on the threshold of an historic occasion and full voting representation is a reachable goal.

Now, Mr. Chairman, I yesterday introduced a joint resolution, whose language is identical to the language of House Joint Resolution 554, which you introduced on July 5 of this year.

I am aware, Mr. Chairman, of the long hours and considerable thought which lawyers on your staff and mine, along with others, de-

voted to shaping this new language. I believe it accommodates the legitimate concerns raised by our learned colleagues during the hearings and debates of the previous resolution. I further believe it will withstand constitutional scrutiny and be a sound amendment to our Constitution.

Most importantly, House Joint Resolution 554 does the right thing. It provides for the District of Columbia voting representation in the Senate as well as the House.

It is for those reasons that I support House Joint Resolution 554 as evidenced by my introduction of an identical resolution.

Section 1 of House Joint Resolution 554 will allow the District of Columbia, pursuant to article V of the Constitution, to participate in the ratification of constitutional amendments along with the 50 States.

Aside from that change, and the repeal of the 23d amendment at section 3, the effect of House Joint Resolution 554 is the same as that of House Joint Resolution 280, the previous resolution.

Repealing the 23d amendment allows the District, like the States, to have the number of electors to compare to the total number of the District of Columbia Senate and House Members. As presently drawn, the 23d amendment allows the District of Columbia no more than "the least populous State," or three. Repealing the 23d amendment will correct this constitutional deficiency.

I might hasten to add that House Joint Resolution 554 is not a District of Columbia statehood bill. It simply completes the rights of the 23d amendment enacted in 1961, which enabled District residents to vote for the President and Vice President, to include voting representation in the Congress.

The new resolution at section 2 also makes clear that the establishment of boundaries, the manner of filling senatorial vacancies and other responsibilities left to the people of the various States, are likewise left to the people of the District of Columbia.

I am often asked, why seek full voting representation now?

Why press for Senate seats for the District with the knowledge of the difficulty of convincing the Senate to do the right thing?

My response to that line of inquiry is that the effort to secure the District of Columbia voting representation is aimed at placing the District of Columbia residents on an equal footing with all other Americans. Equality is not achieved by providing representation only in the House. To be sure, recognition of the right to voting representation lends credence to the right to full voting representation for the District of Columbia.

Moreover, the Constitution, after nearly 200 years since its adoption, has only been amended 26 times. It is thus inappropriate to suggest a piecemeal amendment process to secure District of Columbia voting representation. It is more logical and practical to include all necessary provisions in a single amendment.

Perhaps the most noteworthy response I have given, Mr. Chairman, is that the Senate and the House have different roles. How can it be said that the District of Columbia citizens are represented if they have no voice and no vote in senatorial confirmation of Presidential appointees, for example?

How is there true District of Columbia representation if they have no voice and no vote in the selection of Federal judges serving the

District of Columbia, or more importantly, the ratification of certain treaties with foreign governments?

How can it be said that the District of Columbia is represented when one realizes that had the House voted to impeach Mr. Nixon, the Senate would have tried him, and the Americans of Washington, D.C., would have had no voice and no vote in that most historically important, precedent-setting process?

Again, I submit the response is very obvious.

The Constitution of the United States does not expressly deny congressional representation to the District residents. However, the principles of democracy, the essence of our Constitution, laboriously etched by the blood and sacrifice of Americans throughout the years, those things demand, I believe, that we extend during the 95th Congress, full voting representation to the people of the District of Columbia.

It is, I repeat, a reachable goal. To further delay this fundamental right, is to deny democracy.

I leave with you the words of an English Methodist minister, who on one occasion stated that on some issues—cowardice asks the question, is it safe? and vanity asks the question, is it popular? and expediency asks the question, is it politic? but conscience asks the question, is it right? And on some issues we have to take the position not because it is safe or popular or politic, but because it is right.

And it is right that the citizens of the Nation's Capital be afforded the privilege of full voting representation in the legislative branch of the Government in the 95th Congress. Thank you.

Mr. EDWARDS. Mr. Fauntroy, that was the most persuasive argument in favor of full representation for the District of Columbia I have yet heard. I compliment you and your staff on the preparation and scholarly work that went into it.

I hope it gets wide distribution to our colleagues in the House and the Senate.

The gentleman from Massachusetts?

Mr. DRINAN. Thank you, Mr. Chairman.

I also congratulate our colleague, Congressman Walter Fauntroy.

Would you please elaborate on your point on page 4 where you state that the resolution filed by the chairman and jointly by yourself accommodates the legitimate concerns expressed by our colleagues during the previous hearings and debates?

Mr. FAUNTROY. Thank you, Mr. Drinan for that question, because I was very much impressed with the argument raised during the course of our hearings and debate in the 94th Congress by our distinguished colleague from Virginia, Mr. Butler, particularly with respect to the need to answer a number of questions, which, at that time, House Joint Resolution 280 did not deal with.

And in the effort to address those problems, we have, we think, come up with a formulation that places District residents on an equal status with all other residents of the country.

So that in the question on the article V concerns about the role of the jurisdiction with respect to the ratification of proposed constitutional amendments, we have created a mechanism by which District residents would have the same participation as do the residents of other States.

With respect to the question of the representation in the College of Electors, we have reached over into the 23d amendment, and by repealing section 3 of it, dealt specifically with the equality question by simply stating that District residents shall be represented in the College of Electors in the same manner as are all other residents of the States, and that is on the basis of their representation in both Houses.

So in that sense we have, I think, satisfied the dictates of both conscience and quality in House Joint Resolution 554 by placing District residents on an equal citizenship status with all other Americans, just as they share that status with the residents of Federal districts in England, in West Germany and in France, and in some 14 other nations of the world that have the privilege of voting representation for their residents of the Federal district, in the national legislatures.

Mr. DRINAN. Mr. Fauntroy, would this satisfy the concerns of Mr. Buchanan, who as you recall, 2 years ago, filed the Buchanan amendment on the floor. And that was the issue on which we voted.

Would you refresh my recollection? What precisely was the Buchanan amendment? And is that satisfied by this new resolution?

Mr. FAUNTROY. The Buchanan amendment last year was designed really to assure that we would not violate the equal status of District residents by denying them representation in the Senate.

As you recall there were arguments made, as were probably made this year, that it would be very difficult to move full voting representation to the Senate, and that perhaps the best we could do in terms of a constitutional amendment, would be to amend the Constitution to allow voting representation in both Houses, and in the course mandate representation in the House and leave representation in the Senate to a legislative process by which both Houses passed by majority vote and the President signs a bill to allow it in the Senate.

That was the essence of the Buchanan amendment.

Mr. DRINAN. But would resolution 554 be subject to the same objection?

Mr. FAUNTROY. I think that this resolution of course, would be subject to the same amendment, although I am sure, as Mr. Buchanan will testify, his position as is mine, and I think most of those who have studied the issue, his position is that we ought to grant to the District residents, what every other citizen has, and that is full voting representation in both Houses. And we ought to do it by constitutional amendment that is straight out on the subject.

Mr. DRINAN. I thank you. And I hope that with this new resolution, our friend from Virginia, Mr. Butler, will be born again, and that 20 more people will be born again, and that we will pass it by two-thirds on the floor.

Thank you very much.

Mr. EDWARDS. The gentleman from Virginia?

Mr. BUTLER. I want to thank you. It is always a difficult adjustment to realize that there is such a thing as "born-again Catholics." That was a new line and it will just have to take me a while to get used to it.

[Laughter.]

Mr. FAUNTROY. Amen, brother.

Mr. BUTLER. I would like to say to our colleague from the District that I have often worried about the problem of people in your profession, that is how do you get a new sermon every Sunday. Especially when you have the same old theme. So I am really impressed with your ability to come back here and ride this same old horse with so many new and different nuances, really, that I congratulate you on your ability to develop this question and the new points that you have raised.

It is very persuasive, and I congratulate you on that. And while I haven't been born again, I have certainly not lost my interest in this matter; I am anxious to work on a compromise that will pass.

You have introduced something which I haven't thought about before, quite frankly, the ratification virtues which you think full representation include. And I would judge that certainly is one feature which we haven't thought of before.

But really, each time you get closer to statehood without becoming a State, you are trespassing on the prerogatives which our Constitution has assigned to the States, and which they must surrender in the amendment process.

So I want to ask you seriously, now, since it takes only 13 States to buck a constitutional amendment causing it to fail—you mentioned the 7 States—do you really think that those 7 States would, out of the goodness of their hearts—those small, 7 States—extend to a city representation in the Senate of the United States?

Are you planning to get some votes from those seven States, or have you written them off?

Mr. FAUNTROY. I have great faith in the sense of fairness in the American people. And I have every reason to believe that if the Congress in its wisdom, passes this resolution, that we will probably beat the record in the ratification process on the 23d amendment to the Constitution.

I think when asked, when the American people asked the question, when they are asked the question, is it right to deny full-fledged American citizens full voting representation in the House and in the Senate simply because they happen to live in the Federal District, they will answer "No."

And I think perhaps the seven States to which you made reference, will probably be our best supporters in this quest because they would answer, is it right to deny the 600,000 people of Montana, for example, the right to representation in the Senate and in the House simply because they have less people than reside in the Federal District? Is it right to deny the 400,000 or more people in Idaho the right to representation in the Senate and the House simply because they have less people than reside in the District of Columbia?

When they are asked that question, I think the demands of conscience, and the dictates of equity and fairness, will make them our chief supporters.

Mr. BUTLER. Well, I can only express disappointment with that. When you are hanging this proposal on the conscience of the people of Idaho as your best supporters, then I am really apprehensive about it. I just don't think that human nature is such that you are going to be able to persuade those States.

Consider the equal rights amendment floating around here. There are still about 15 States, I believe, who haven't adopted that. Now most of them are neighbors of ours.

Do you really think those 15 States are going to be any more enlightened about enlarging the Senate than they are voting the equal rights amendment?

Mr. FAUNTROY. Again, I rest my case on the demonstrated experience in getting the American people to respond to the question, is it right to deny the citizens of our Federal District the privilege of voting for President.

They said obviously that is not right, there is no reason to do that.

I think, confronted with a simple, similar argument—and that is all that this is, when asked is it right to deny the citizens of our Federal District, simply because they live there, what every other American has, and that is representation in both Houses of the Legislature, I think that simple argument will find simple and positive response in all of the States.

Mr. BUTLER. Well, let's look at it once more. If you were persuaded, quite frankly as I am, that the ratification of an amendment may not be such an obstacle, because that is too subtle for the average person to take in. But with reference to expanding the size of the Senate, if you were persuaded as I am, that this just will not fly in three-fourths of the States, would you think it would be more important to continue to try to persuade these States in what is right?

Or, would it be more appropriate to settle for the present as we did before, as you did before—I wasn't here—with reference to the expansion of the electoral college representation?

Would it be appropriate to take another small bite that has some reasonable assurance of adoption, or do you want to fight this thing on until we can bring enlightenment to the world?

Mr. FAUNTROY. Yes. I think it is important and a reasonable goal that we try to convince the unconvinced. And as I said, inform the misinformed. And I believe that with a serious effort on our part—and we have friends across the Nation and many Members of the Congress, who I think are prepared to reason on this subject, with that kind of effort I think we can move the American people to make the kind of hard, frank judgment that the Founding Fathers made when they were confronted with the question of whether or not in the Senate, there shall be equal representation on the basis of jurisdiction.

Now I know that was a difficult decision. The large States like New York said, all right, we understand that in the interests of equity, in the interests of the principles of constitutional government, we, in New York, will agree that little Delaware will have two Senators, and we will have two Senators.

That was a hard judgment, but they made it. And if they could make it, I think the American people can be persuaded to follow their instructive example.

Mr. BUTLER. The chairman tells me my time has expired.

Just historically, though, I think it was more of a pragmatic decision than it was the goodness of the heart of the people of New York, with which I haven't had much experience.

I yield back, Mr. Chairman.

[Laughter.]

Mr. EDWARDS. The gentleman from Missouri, Mr. Volkmer.

Mr. VOLKMER. Thank you, Mr. Chairman.

I, too, enjoyed the comments of my good friend from the District of Columbia. I have an open mind on this. As a freshman, most of the discussion I have engaged in, not having heard all the arguments as the others here have, go to representation in the House of Representatives, and not full representation.

Personally, it seems logical that if there is to be representation at all, it should be full representation. I have not heard the arguments on the other side, but I have to agree that if the residents of the District of Columbia are going to be represented in the House of Representatives, they should also be represented in the Senate. To do otherwise, would be completely illogical.

I appreciate listening to your arguments. I will keep an open mind, and continue to study the matter further.

Thank you very much.

Mr. FAUNTROY. Thank you, Mr. Volkmer.

Let me respond, Mr. Chairman, if I may by stating that I am just so pleased with the attitudes and enthusiasm of so many of our new Members. There are 72 in the House this year, as compared to the 94th Congress. Mr. Volkmer is among them. And I am sure that he will attack this question with his own staff and his own thinking with the same vigor with which he attacks the ball on the baseball field. He is one of the most dedicated outfielders to come to the Democratic team. And, had we about three more of him the night before last, the score wouldn't have been 7 to 6 Republicans, it may have been 8 to 7, Democrats.

[Laughter.]

Mr. EDWARDS. Well, there is always next year.

[Laughter.]

Mr. EDWARDS. The gentleman from Illinois, Mr. McClory.

Mr. MCCLORY. Thank you, Mr. Chairman. I believe our next witness may be here and I don't want to take long in my questioning.

A very persuasive argument against the approach to full representation is the subject of retrocession. Since part of the original District has already been retroceded to the State of Virginia, if the balance of the District were retroceded to the State of Maryland, there would be full representation in the House and the Senate for the citizens of the District who would then become citizens of the State of Maryland.

I would like to hear the arguments against that approach. You can start on it, and maybe Senator Bayh, when he comes to the witness stand, can discuss that same subject.

Mr. FAUNTROY. I am confident that Senator Mathias and the distinguished Members of the House from the State of Maryland, would probably best be able to present that argument. But let me just say two things.

First, that it would, in our view, require the agreement of the State of Maryland to such an arrangement. And in that regard, I think practically would be difficult to achieve.

But more important, I think it is second, a question of basic equality again. The fact is, if anybody ought to have representation in the National Legislature, it should be the citizens of the Federal District, for they alone among Americans, depend upon the collective judgments of these two bodies, together with the President, for every ordinance, every law affecting their lives, because this constitutional amendment—neither this constitutional amendment, nor the home rule charter for which we labored so long and for which we are so grateful, neither of those things takes away from the Congress of the United States and the President of the United States, responsibility for the governance of the people of this District.

So that those two arguments I think, among others, are the most potent I think in dealing with that question of retrocession.

Mr. McCLORY. Thank you, Mr. Chairman.

Mr. EDWARDS. Are there further questions?

Mr. VOLKMER. Will the gentleman yield?

Mr. EDWARDS. I recognize the gentleman.

Mr. VOLKMER. I would like to comment on retrocession. In considering that alternative I have come to the conclusion that it would create more problems than it would solve.

Mr. EDWARDS. If there are no further questions, we thank you very much, Mr. Fauntroy.

Our next, and it happens our last witness today is the Honorable Birch Bayh, senior Senator from Indiana. He is chairman of the Senate Judiciary Subcommittee on the Constitution and a personal friend of most members of this subcommittee and the full committee, Senator Bayh is an outstanding constitutional lawyer, known nationwide for his work in constitutional law.

Senator Bayh, we welcome you. You may proceed with your statement.

My colleague from Illinois reminds me that he was a splendid baseball player, too. [Laughter.] Not quite good enough. [Laughter.]

TESTIMONY OF HON. BIRCH BAYH, A U.S. SENATOR FROM THE STATE OF INDIANA

Senator BAYH. I appreciate that the gentleman from Illinois put that in the past tense. That probably would be excessive, but certainly to put it in the present tense would be ridiculous.

But I appreciate it, Mr. Chairman.

Mr. Chairman, and members of the committee, I appreciate the chance to share some thoughts with you.

I have listened to our colleague from the District discuss the subject which is dear to his heart, and feel that almost anything I can say would be anticlimactic.

I would ask unanimous consent if I could, please, Mr. Chairman, to put in the record a statement that I have prepared.

Mr. EDWARDS. Without objection the statement will be included in the record.

[The prepared statement of Hon. Birch Bayh follows:]

STATEMENT BY HON. BIRCH BAYH, A U.S. SENATOR FROM THE STATE OF INDIANA

Mr. Chairmau, members of the Judiciary Committee, ladies and gentlemen, as Chariman of the Senate Subcommitte on the Constitution, I have always had a very strong interest in direct representation for the District of Columbia. As you may well know, I have, in the past, chalred hearings on this subject. This is an important area of concern, and I think it deserves the attention of the Congress, the President, aud all the citizens of this great country.

Just as opinion polls in the past have indicated that a large majority of the American people favor a constitutlonal change to direct eiection, I am sure those same American people would indicate the same positive interest in giving full representation to the District of Columbia if they were fully aware that their feiiow citizeus have been denied that fundamental political right since the inception of this nation. Further, I would like to add that it gave me a great deal of pleasure to join my distiuguished colieague, Senator Kennedy, as a co-sponsor of a constitutional amendmeut which calls for full representation for the District of Columbia. I am ready to take every appropriate action to move this important amendment toward quick approval by the Senate so that the residents of the District, like all other citizens of this nation, will receive the representatiou to which they are entitled.

The District of Columbia has been for many years what we might call a living paradox in the American scheme of government. It is the seat of the greatest representative democracy the world has ever known, yet it was not until 1964 that its residents were permitted to vote for the President of the United States. And it was not until April 1971 that they were given the right to elect a nonvoting delegate to the House of Representatives. Even though this does represent an improvement, it is uot enough. We must go further in extending greater representation to the District.

I say this because I firmly believe that the conditions that led to the original decision to deny representation during the Constitutional Convention have drastically changed. The framers of the Constitution were intent on providing a site over which the Federal Government would exercise exclusive control. They wanted a separate capital which would not only protect the national image, but which would be immune from both jurisdictional disputes as well as potentially harassing incidents. For many of the Founding Fathers, national representation for the District's citizenry would necessariiy have presumed statehood; and statehood, of course, would have precluded the establishment of exclusive Federal control over the capital site. As James Madison stated in the Federalist Papers, "compiete [Federal] authority at the seat of government" was necessary to avoid the "dependence of the members of the general government on the State comprehending [that] seat * * * for protection in the exercise of their duties." Clearly, the Founders perceived the need for a strong Federal territory, free of State encroachment, and secure from domestic unrest.

However, it should be noted that while the Framers fully intended to establish a separate capital city, they never fully decided to exclude the residents of that city from political representation. As a matter of record, it is important to note that between 1790 and December 1800, residents of the District participated in state and national elections, including the Presidential eiection of November 1800, by voting in either Maryland or Virginia. However, when Congress finally assumed control of the District in late 1800, the lame-duck administration of John Adams rushed to take over the administration of the District before President-elect Thomas Jefferson's Republicans came to power. As Pulitzer Prize winning historian Constance Green points out, the Federaiists neglected to give the franchise to District residents when legislating the takeover. After the Federalists left office, attempts were made immediateiy to rectify the problem. Unfortunateiy, as the fight began to retrieve suffrage for District residents in February 1801, the measnre was lost in the shuffle of the Jefferson-Burr electoral college deadlock controversy which plagued that particular Congress. Since that time, there have been more than 150 attempts to provide representation for the District. Most of these measures have also been victimized by what was then considered much more pressing business before the Congress.

We must not overlook another very basic reason why the District failed to receive representation in the early years of the Republic. Its population was too small. In 1801, the District had only 14,000 residents, far fewer than the 50,000 required of territories that wanted to enter the union at that time. Quite naturally, such a small population could be easily overlooked. Yet, during the 1801 debates

on District suffrage, many members of Congress spoke of providing representation for the District when its population reached the appropriate size.

Today, however, the population size of the District is far more than appropriate for representation. Given its size alone as criterion, representation is essential. The District's present population is larger than 7 of the 50 states in the Union—and larger than that of any of the original 13 states during the first years of the Republic.

The historical reasons certainly do not justify the District's lack of representation. Unpaid soldiers are not storming our hallowed halls. The federal government has adequate police protection. Congress has a well-protected, safe, and comfortable home. All the reasons in the past for not extending equal representation to the citizens of the District are no longer valid. On the other hand, there are considerable reasons why we should extend the full franchise to 750,000 American citizens.

There is nothing more abhorrent to the American people than the idea of taxation without representation. One of the fundamental principles enunciated by our founding fathers was the firm belief that those citizens who contributed to the public coffer should and would have the right to elect their leaders. Over 200 years ago, the injustice of taxation without representation served as one of the major elements which drove our forefathers to revolution. We will fail to be consistent with the dictates of our forefathers if we do not provide representation to a portion of our citizens who are law-abiding taxpayers.

Let us put an end to this glaring contradiction in our philosophical principles. Let us no longer make a mockery of our democracy. We have the means by which to make the dreams that our forefathers fought and died for a reality. It is a basic premise of our system of government that each deserves a chance to be heard and to express his political views through a freely elected representative or representatives. That is all the citizens of the District are asking. The irony of these hearings is that it has taken over 200 years to provide them with that right. Therefore, it is our responsibility and duty as members of the most democratic governmental unit in the world to correct this wrong. To do less would be an unpardonable miscarriage of our oath of office, as well as a blatant miscarriage of justice.

Senator BAYH. I have just received word from my office that we are having an unexpected crisis on the floor, so if I am brief, I hope you will forgive me.

It seems to me that there are many reasons that might compel us to seriously consider this matter. And as chairman of the Committee on the Constitution, and prior to that time the Subcommittee on Constitutional Amendments in the Senate, the chairman knows that I have been interested in this subject for a long time.

We have explored a number of means over the past years to better enfranchise citizens of our country who do not have full first-class citizenship. I won't repeat the steps that have been made to members of this committee, because they have been out leading the charge in many areas.

We are presently still pursuing other avenues to see that the system works properly, that everyone is equally represented. One example that comes to mind which we are presently moving through the Judiciary Committee is the direct election of the President, which has already been passed by this body, and then filibustered by the Senate.

But I come as one who has been with you, Mr. Chairman, concerned that the system does not work perfectly until everyone has an equal opportunity to effect his or her own destiny working through the system. And it is rather apparent that the hundreds of thousands of people who live in the District of Columbia do not have that opportunity right now.

It is all well and good to have a very articulate sensitive nonvoting Delegate, and if you are going to choose a nonvoting Delegate, I don't think any State or certainly the District could have done better than the one we have. But a nonvoting Delegate doesn't have the main tool of the trade. He can talk, cajole, use his significant persuasive power, but when it comes right down to it, when the votes are tallied, he is not there in number.

So I think it is important, first of all, to give the citizens of the District full representation in the Congress so that they will be represented when the national decisions are made.

Second, I think it is equally important to—no, that is not accurate, it is not equally important; it is the number one reason far beyond any other—I think if one would look to what has happened in the past, as to why the District does not have representation right now, one can see that the early concerns expressed by our Founding Fathers are no longer relevant.

The framers fully intended to establish a separate city for the Nation's Capital to avoid the disputes that were going on at that time among the States on the jurisdictional questions.

But the issue was never fully decided as to whether the residents of the city should be excluded from political representation. It is a matter of record, as I am sure you and the members of this committee know, that the residents early on in our civilization, in our Government, did have the right to participate in Presidential and State elections. At that time they were participating in the various two States that were involved—Maryland and Virginia.

But there was never a concentrated effort to try to exclude them.

When the Congress finally assumed control of the District in 1800, the lame duck administration of John Adams rushed to take over the administration of the District before President-elect Thomas Jefferson's Republicans came to power. And as Pulitzer Prize winning historian Constance Green points out, the Federalists neglected to give the franchise to District residents when legislating the takeover.

It was more one of those issues that fell between the cracks. In February 1801, after the Federalists left office, attempts were made by the new administration to rectify the problem, but unfortunately, the fight to retrieve suffrage for the District residents became subjugated to the most important problem before the Congress; namely, who was going to be President, Thomas Jefferson or Aaron Burr.

And in the process the District of Columbia representation was passed by. Since then, there have been 150 attempts to try to deal with those who have been victimized in the District by being denied representation.

It seems to me that we have to recognize that one of the reasons at that time that was used to pass over the District was that it was so small, its population at that time was only about 14,000 residents, as I recall, which was far fewer than the 50,000 residents that were required for territories that wanted to enter the Union at that time. It was easy to overlook such a small population.

But certainly there can be no question today. The District's population is larger than seven States, and much if not all the reasoning used early on is no longer relevant. There are no unpaid soldiers

knocking at the door of the Capitol Building demanding to be paid, or some of the other horror stories that our Founding Fathers were concerned about, if we did not establish a separate National Capital.

Mr. Chairman, I don't need to treat this committee to any long extended discussion of taxation without representation and some of the basic philosophies that underlie our Government. I just think the time has come to give the people of the capital of the greatest democracy in history the same rights that all other citizens in this country have, the same rights that we espoused around the world, but which are by unique circumstances, denied the citizens of the capital.

That ends the minibuster.

[Laughter.]

Mr. EDWARDS. Thank you very much, Senator Bayh. Your being here, presenting your excellent statement, gives us confidence that you and your colleagues in the Senate are going to be of great assistance in this important constitutional matter.

The gentleman from Massachusetts.

Mr. DRINAN. Thank you, Mr. Chairman.

I, too, want to congratulate our colleague, Senator Bayh, for his perseverance and patience in this regard.

I have just one question, because I don't want to delay the Senator from getting back to the floor of the Senate.

But if we were fortunate enough to be able to pass this on the floor of the House by the two-thirds that is required, would you be able to assess the possibility of action that would be favorable in the Senate?

Senator BAYH. I think we have a reasonable chance of passing it, Congressman Drinan, and I am sure you know, it is never easy to get two-thirds for anything agreed to in the U.S. Senate, except to recess. [Laughter.]

In fact, we agreed yesterday to not have a recess, temporarily. I predict we will probably agree to have one again in the near future.

But it is difficult. All I can promise you and the other members of the committee is to make the best effort I know how to make to make the case persuasive—hopefully, we will be propelled into action by action taken here. I think this will greatly increase our chances.

Mr. DRINAN. Let me just say that if we didn't have you there as our spokesman, I am certain that we wouldn't go forward. But we go forward with the hope that we can pass it here, and with the hope and expectation that you will be successful in the Senate.

Thank you very much.

Senator BAYH. Thank you, Father Drinan.

I can't overestimate the emphasis that action here would have on our colleagues.

Mr. EDWARDS. Mr. Butler?

Mr. BUTLER. I thank the Senator for taking the time to share his thoughts with us. And one thing I want to thank you for, my predecessor in this office, Congressman Richard Poff worked with you, I think on the 25th amendment.

Senator BAYH. I am sure he did.

Mr. BUTLER. But one of the things he told me was the biggest mistake the Republican Party ever made was to let the Democrats steal Thomas Jefferson.

So I am tremendously pleased to note in your statement this morning, that you referred to Thomas Jefferson as a Republican, and reminded us that he did call himself a Republican, and I am grateful for that little historical lesson. [Laughter.]

I too, Senator, share the concerns of the gentleman from Massachusetts with reference to how this measure is going to fly in the Senate.

I am sure we will have no problem getting the Senate of the United States to agree to amend the Constitution to increase representation in the House of Representatives. You recognize no problems there, I presume?

Senator BAYH. Perhaps not in the Senate. I leave that to your jurisdiction here. Take first things first.

Mr. BUTLER. That's right. That is going to be the hurdle here.

But, I judge that—the problem in the Senate is to get the Senators to agree to share that high estate with one additional group, the District of Columbia. And we have your assessment there.

My question is, is your burden increased, decreased or not affected by the additional provision of the constitutional amendment before us, which extends to the District of Columbia, the power of participating in the ratification of a constitutional amendment as if it were a State.

Does that alter its chances in the Senate?

Senator BAYH. I don't think so, sir.

I think you put your finger on the sensitive nerve of the Senate. To me it seems to be a very selfish argument. It lurked in the wings during the time Hawaii and Alaska were considered, that any one of the 100 of us is diminished in power by adding another two colleagues, which seems to me to be very selfish.

It is not a well-founded argument. That seems to me is the argument we can direct our attention to. And I am not at all concerned about the ratification issue.

Mr. BUTLER. I thank you.

Mr. EDWARDS. The gentleman from Illinois, Mr. McClory.

Mr. MCCLORY. Thank you, Mr. Chairman.

I wonder if the Senator from the State of Indiana, one of the adjoining States of Illinois, would comment on the subject of retrocession which I addressed in a question to Mr. Fauntroy.

Senator BAYH. My good friend Bob McClory, I have to say if we think getting two-thirds of the Senate to give the citizens of the District the right to vote as citizens of the District is going to be difficult, I think you can multiply that at least times two as far as the possibility of retrocession, I just don't envision that possibility has much chance of flying in the Senate.

But really, we are not trying to break up the District, so to speak in any way. We are just trying to give to citizens who live in the Nation's Capital, a right that now is possessed by others.

Mr. MCCLORY. Well, we did retrocede the Virginia part, the part on the other side of the Potomac to Virginia, and those citizens don't seem to be complaining. They don't want to come back into the District and get this kind of enhanced representation which we are considering for the remaining part of the District which adjoins Maryland.

But I am, as are some of my other colleagues, skeptical about the support of this proposal in the Senate. There were, I think, four Mem-

bers, two Republicans and two Democrats who joined us at the time we had a press conference announcing the program, and it was suggested to me that maybe that would be the sum total of support for this resolution in the U.S. Senate

But I am encouraged by your expression of optimism of getting two-thirds there.

Are you firm in your support of this proposal?

Or do you consider that this is sort of a bargaining proposal?

Would you consider it as a bargaining proposal with the idea that some compromise like the compromise proposed in the last Congress might satisfy the people of the District of Columbia, and we would have this hybrid type of partial representation solely in the House and not in the Senate?

Senator BAYH. Well, Congressman McClory, I want to get as much representation as we possibly can for the District. I think the ideal, and to me, as I sit here now, most acceptable vehicle is full representation.

I think at a time, hopefully which we will not actually come to, that this is no longer possible, that the effort is fraught with no chance of success, that stage of the game we might think about some half a loaf. But right now, I think is the wrong time to consider halfway measures.

Mr. MCCLORY. Thank you.

Mr. EDWARDS. If there are no further questions, we will excuse the witness, with many thanks.

The Chair believes that the chances for passage really are much better this year, and we are moving full steam ahead with additional hearings right after the recess.

Senator, we thank you very much.

The subcommittee is adjourned.

Senator BAYH. Thank you, Mr. Chairman, gentlemen.

[Whereupon, at 10:20 a.m., the hearing in the above-entitled matter was adjourned.]

REPRESENTATION FOR THE DISTRICT OF COLUMBIA

WEDNESDAY, SEPTEMBER 14, 1977

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 9:30 a.m. in room 2237, Rayburn House Office Building, the Honorable Don Edwards (chairman of the subcommittee) presiding.

Present: Representatives Edwards, Drinan, Volkmer, McClory, and Butler.

Also present: Thomas P. Breen, counsel; Ivy L. Davis, assistant counsel; and Roscoe B. Starek III, associate counsel.

Mr. EDWARDS. The committee will come to order.

Today, we continue our series of hearings on resolutions introduced this session, which would amend the Constitution by giving the residents of the District of Columbia full voting representation in the Congress.

Our next hearing is scheduled for Wednesday, September 21, in this room and at this time.

Each witness this morning shares a common purpose: To correct what many believe was an oversight by the framers of our Constitution. Whether or not the voices of District residents were intentionally or mistakenly silenced in the Congress, it is clear their continued silence will no longer be tolerated.

The fundamental right to vote must be expanded and vigorously protected. To continue to deny that right to the residents of the seat of government strikes a blow to the very foundation of this democracy.

Our first witness today is my distinguished colleague from Alabama, John Buchanan. Mr. Buchanan, you are remembered by all as an effective and dedicated supporter of House Joint Resolution 280 in the 94th Congress and, through your leadership, helped bring the matter to the House floor for debate and vote. It was the first time in our history that such a resolution reached the House floor.

John, we are delighted that you are here. We are looking forward to your continued support on the floor of the House.

And before I recognize you, I would like to yield to the gentleman from Illinois, Mr. McClory.

Mr. MCCLORY. Thank you, Mr. Chairman. I appreciate the opportunity to welcome to our hearing our colleague John Buchanan and indicate again my strong interest for a constitutional amendment which would provide for full voting representation for the District

of Columbia. I am hopeful that our hearings can bear fruit. I know we have a staunch supporter of this concept in our colleague, and I welcome his testimony.

TESTIMONY OF HON. JOHN BUCHANAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ALABAMA

Mr. BUCHANAN. Thank you, Mr. Chairman and Mr. McClory.

I appreciate this opportunity to testify today in support of House Joint Resolutions 139 and 554. These resolutions provide for a constitutional amendment which would entitle the citizens of the District of Columbia to full voting representation in Congress. I have sponsored resolutions on this subject in previous Congresses, the earliest being the 90th Congress, and as recently as March 1976 introduced an amendment which would provide at a minimum one voting Member of the House of Representatives. Although these efforts so far have been unsuccessful, I am committed to granting full voting representation to the District of Columbia citizens. I agree with the chairman of the subcommittee that this was certainly an oversight of our Founding Fathers.

The resolutions under consideration by this subcommittee would give substance to a doctrine long advocated by Members dating back to the formal establishment of the District of Columbia. Speaking of the District in 1803, Representative Huger of South Carolina said the following:

> I look forward to the period when the inhabitants, from their numbers and riches, will be entitled to a representative on this floor.

It was not until the 1880's, however, that resolutions to give District citizens voting representation were introduced with any passion or frequency. On April 4, 1888, there was introduced in the U.S. Senate a resolution proposing an amendment to the Constitution providing for voting representation in Congress for the District of Columbia. The Senate Judiciary Committee allowed the resolution to die with the adjournment of Congress. Subsequent Congresses saw similar resolutions introduced. In 1922, 1925, and 1949, the Senate Judiciary Committee approved such resolutions only to have them fail in either the full House or Senate. In 1940, the House Judiciary Committee reported out legislation providing for District of Columbia representation, but the measure was not voted on the floor of the House before the adjournment of Congress. So, at various times since 1888, the Houses of Congress have had before them resolutions similar to the ones being considered this morning.

Since the 1880's, the population of the District of Columbia has increased from about 225,000 to 750,000 and the District of Columbia now has a population larger than that of 10 of the States. Nevertheless, the District remains without voting representation in Congress. District citizens are subject to taxation, and the entire body of Federal law without the privilege, through elected representatives, of influencing the enactment or alteration of those laws.

The United States, the paramount leader of the Western democracies, finds it is the exception and not the rule regarding the representation status of the citizens living in its Capital City. Various coun-

tries of Latin America have federal districts similar to the District of Columbia, but all provide for some voting representation in the national legislature. The District of Columbia is indeed a "colony" within the continental United States almost 200 years after our people dissolved its ties with Great Britain over the issue of "taxation without representation."

While the Congress took a very important step in the right direction in 1970 in providing for a nonvoting District Delegate to the House, this act was only a small step toward correcting a grave inequity to the citizens of the Nation's Capital. We took an even larger step in 1974 by granting home rule to the District of Columbia. The home rule grant is a recognition of the right of the people of the District of Columbia to govern their own affairs and exercise the same rights as the people of the 50 States. The principle of universal franchise is so fundamental to our democratic government that it amazes and frustrates me that so many of my colleagues still do not recognize the injustice imposed upon the residents of the District of Columbia.

In my position as a member of the Committee on International Relations, I have actively pursued human rights for all people throughout the world. I would consider it a grave oversight on my part if I did not speak out about the denial of rights to the people of the District of Columbia.

While, in my own personal judgment, there cannot be equitable representation in a bicameral legislature unless there is representation in both bodies of that legislature, I offered a compromise amendment last year to at least provide some mechanism whereby Congress could enact or provide for full representation as it saw fit. That amendment provided that the people of the District of Columbia would elect at least one Representative in Congress, and, as may be provided by law, one or more additional Representatives or Senators or both, up to the number to which the District would be entitled if it were a State, and that Congress would have the power to enforce the article by appropriate legislation.

This proposal was originally authored by a very distinguished former Member, a chairman of the Committee on the Judiciary, the Honorable Emanuel Celler. This proposal also bore the endorsement of former President Nixon while he was President, and a series of witnesses for the Justice Department, including the Honorable William Rehnquist, then Assistant Attorney General and now an Associate Justice of the Supreme Court. It is my hope that the merits of full representation will preclude the necessity of again offering this proposal. I do believe that you should keep it in mind while you consider the District of Columbia representation question.

Mr. Chairman, taxation without representation is as wrong in the 1970's as it was in the 1770's. The basic justice to the citizens of the District of Columbia is almost 200 years late in coming. It should surely come now.

There is nothing wrong with the great American dream—the challenge of our time is to fulfill that dream for all this Nation's people. There is nothing wrong with the American system of government. It is the responsibility, however, of this great committee of the Congress to make certain that the system furnishes equity for the good of all the people of this Republic.

Last year, during the "Spirit of '76," many of our colleagues spoke eloquently of the virtues of the Founding Fathers and the principles they espoused. Yet many of these same Members voted to deny 750,000 citizens voting representation in the legislative branch of our Federal Government. This continued denial is nothing less than a scandal.

History and justice cry out together that this inequity must be corrected now. I urge the members of this committee to right this wrong by the early approval of this resolution. Such action will by no means solve all the problems of our Nation's Capital City, but it will constitute a concrete important step toward basic justice for the American citizens who live in this city, and will be at least one small step toward creation in Washington, D.C., of an alabaster city undimmed by human tears.

I stand ready to support you in every way that may be possible.

Mr. EDWARDS. Thank you very much, Mr. Buchanan. We are again looking forward to your support. You were key in the last debate on the floor of the House. I know we are going to need you again; and we are just delighted that you will make your eloquent voice available on this all-important issue for what, we hope will be the last time.

Mr. BUCHANAN. Thank you, Mr. Chairman.

Mr. EDWARDS. Mr. McClory?

Mr. MCCLORY. Thank you, Mr. Chairman.

I just want to ask this, Mr. Buchanan. There are various alternatives that have been proposed, such as to statutes, retrocession of the part that is on this side of the Potomac to the State of Maryland, and other options which would give some kind of a hybrid, or qualified representation for the District of Columbia.

Do you feel that any of them are worthy of consideration, or must we pretty much reject those alternatives as possibly being excuses for not giving constitutional representation to the residents of the District of Columbia?

Mr. BUCHANAN. Anything less than representation in both bodies of a bicameral legislature cannot be equal representation. The U.S. Senate, for better or for worse, does have a voice in our Government, equal to that of this body.

I don't see how we can claim to achieve equity or equal representation without a presence in the Senate, and the only kind of presence we ever had in the Senate is the two Senators provided each State.

So I don't see how we can achieve what we seek in terms of equity and equal representation for the District of Columbia by any other formula with which I am familiar.

The only basis upon which I would fall back to any such position would be as last time, as a matter of strategy. And yet, I would urge that we try the full representation route this time because that is the only way, in my judgment, we will ever achieve equity.

Mr. MCCLORY. In effect, retrocession would provide representation, wouldn't it? But you certainly would not select that as an alternative, would you?

Mr. BUCHANAN. No, sir; I would not. I do not think, personally, that would be an acceptable solution.

Mr. MCCLORY. Thank you very much for your testimony.

Mr. EDWARDS. Thank you very much.

Our next witness was to be the Honorable Walter E. Washington, Mayor of the District of Columbia. Mayor Washington will be unable to testify today we received word yesterday that there was a death in his family. We express our condolences to the Mayor and his family during their period of mourning.

Here to read the Mayor's statement is Mr. Julian R. Dugas, the City Administrator, accompanied by Mr. John R. Risher, Jr., Corporation Counsel for the District of Columbia.

Mr. Dugas, we are glad to have you here, and you may proceed with your statement.

TESTIMONY OF HON. WALTER E. WASHINGTON, MAYOR OF THE DISTRICT OF COLUMBIA, READ BY JULIAN R. DUGAS, CITY ADMINISTRATOR, ACCOMPANIED BY JOHN RISHER, CORPORATION COUNSEL

Mr. DUGAS. Mr. Chairman and members of the committee:

I am pleased to appear before you this morning to support the joint resolutions to amend the Constitution to give the District of Columbia full voting representation in the Congress.

It is a simple proposition that is stated by these resolutions; namely, to enable the people of the District to elect two Senators and the number of Representatives in the Congress to which the District would be entitled if it were a State.

The resolutions propose different amendments to the Constitution, but I leave it to the lawyers and to this committee to determine which is preferable. So long as the amendments provide District residents with full voting representation in the Congress, the citizens of the District of Columbia and I will be satisfied.

The fact that the District of Columbia is now a self-governing community gives added emphasis and meaning to this joint resolution. It would open the doors of the Congress to elected voting representatives of this city.

It is long past time to give this added measure of self-government to our people. And I hope that the 95th Congress is an auspicious time to finish the task.

It would also be the occasion to remedy a historic error; or oversight, if you will. The historical record is significant. In a sense, this measure is one of reenfranchising the residents of the Federal District that was created under Acts of Congress in 1790 and 1791. Those acts did not take away the rights of the citizens in the area ceded by Virginia and Maryland to elect their own officials and to vote for Senators and Congressmen.

In fact, as Pulitzer Prize historian Constance McLaughlin Green points out in her two-volume history of Washington, local citizens of the new district continued to vote in State and National elections as late as November 1800.

There is evidence that the Founding Fathers intended it to be that way; that the loss of suffrage amounted to an oversight that was not addressed when enabling legislation was enacted more than a decade before the first government of the new city of Washington actually came into being in 1802.

Mrs. Green has cited the records of the Continental Congress suggesting that it had been taken for granted by Americans of the 1780's that permanent residents of the Capital City would "enjoy the privilege of trial by jury and of being governed by laws made by representatives of their own election."

And James Madison in the Federalist Papers, commenting on article 1, section 8 of the proposed new Constitution, apparently assumed that the new District would be fully franchised. He stated:

*** * * the inhabitants will find sufficient inducements of interest to become willing parties to the cession; as they will have had their voice in the election of the government, which is to exercise authority over them; as a municipal legislature for local purposes, derived from their own suffrages, will of course be allowed them * * ***

It was apparently assumed that existing laws of the two ceding States would provide for suffrage as well as the other rights that were transferred.

Unfortunately, things did not work out that way and the suffrage pendulum has been swinging back and forth ever since, but never returning all the way to full suffrage.

In 1802, the city of Washington elected a City Council and the President appointed the Mayor.

Between 1820 and 1871 the Mayor was elected as well. Under the short-lived 1871 territorial form—it lasted only 3 years—the residents of the District elected the lower house of the territorial legislature and a nonvoting Delegate to the House of Representatives.

One hundred years later the District was again permitted to elect a nonvoting Delegate.

This history is also discussed in support of the proposition of nominal statehood for the District in the paper by Peter Raven-Hansen, Esq., entitled, "Congressional Representation for the District of Columbia: A Constitutional Analysis" found in volume 12 of the Harvard Journal on Legislation.

The suffrage pendulum swung far enough by 1961 to permit the District to vote for President, a privilege last exercised by its residents in 1800.

By 1968, Congress authorized the election of the School Board.

And in 1973, Congress delegated the powers of self-government to the District of Columbia, but provided for congressional review of the city's budget and its legislative acts. These provisos add importance to our historical desire to have a full voice in the Congress.

It is unquestionably time for the Congress to take the final step and grant to the citizens of the District of Columbia full congressional representation. I do not believe that it is difficult to justify representation in the Congress for the citizens of Washington.

One basic democratic system in this country provides such justification.

With respect to the District of Columbia, the Congress not only has an impact on national affairs, as it does for all our citizens, but it has a special substantive and direct responsibility for the District's affairs.

Ordinary fairness and basic principles of American democracy, therefore, require that the citizens of the District have a voice in Congress equal to that of individual citizens across the Nation.

The Delegate from the District of Columbia has advised me of substitute language which was prepared with the assistance of the committee counsel after study of the constitutional issues which have been raised in the past.

It is my understanding that this substitute language also provides for the District of Columbia to have two Senators and as many Representatives as it would be entitled to were it a State. Although in my opinion, the language substituted is not as clear on its face as that in the original resolution, to the extent the substitute language is preferable from a legal point of view, I can support it.

Residents of the District have carried out their responsibilities as citizens. They pay Federal and local taxes. They fight and die in our country's wars. They live under laws enacted for them by Congress. When our local residents perform these acts of citizenship, they are indeed entitled to their full rights; the rights enjoyed by all other citizens of this Nation.

Therefore, on behalf of the people of the District of Columbia, I strongly support the resolutions which would propose full congressional representation for them as citizens of the District of Columbia.

I believe it is long past the time for America to make good on its promise for equal treatment for all its citizens and I believe this means full congressional representation for the District of Columbia.

Thank you, Mr. Chairman, for this opportunity to testify.

Mr. EDWARDS. Thank you very much, Mr. Dugas.

The gentleman from Missouri.

Mr. VOLKMER. I have one question, which goes to the issue of statehood. Does the District of Columbia have a sufficient financial base to go it alone?

Mr. DUGAS. We believe with the existing pattern of help from the Federal Government through the Federal payments that we are fast coming to the point where we can go it alone.

Mr. VOLKMER. If the District were made a State receiving those grants, revenue sharing and other Federal assistance, just like any other State, would it be financially able to sustain itself?

Mr. DUGAS. We think if the Federal Government assumes its fair share of the expenses of the District of Columbia that we are required to carry because of the Federal presence, that the District could carry its load.

Mr. VOLKMER. Thank you.

Mr. EDWARDS. Mr. Butler?

Mr. BUTLER. No questions, Mr. Chairman.

Mr. EDWARDS. Mr. McClory.

Mr. MCCLORY. I thank you very much for the statement from Mayor Washington presented here. I would merely ask this as a practical question: Do you have any reading on what chances there are for passage of this kind of a constitutional amendment in the Senate?

I have a feeling that the House of Representatives might quite well support it by a two-thirds vote. I would hope so, and I will vote for it. But I do not have any kind of a reading as far as the Senate is concerned.

Mr. DUGAS. We don't have a reading, but we believe that if the House exerts the type of leadership this time that it did in the past,

that the Senate will see the light and come along and treat us as citizens of this country, entitled to the same rights and responsibilities of any other citizen. I believe the Senate is an enlightened group of people and they will follow the enlightened leadership of the House.

Mr. McCLORY. Do you think that there would be strong public pressure nationwide which would be brought to bear on the Senate following passage by the House?

Mr. DUGAS. I think this: I think America is ready, Mr. McClory, to see that all the citizens of this country enjoy equal rights.

Mr. McCLORY. Thank you very much.

Mr. EDWARDS. Mr. Dugas and Mr. Risher, we thank you very much.

We are especially pleased to welcome our next witness, Mr. Clarence Mitchell. Mr. Mitchell is now wandering around the room and will soon take the witness stand.

Clarence has been a friend of the committee for many, many years. He has a long career in public service, both in the District and throughout the country. Mr. Mitchell is the chairman of the Leadership Conference on Civil Rights, and for the past 30 years, he has served as director of the Washington Bureau of the NAACP. In 1976, Democratic and Republican leaders of both Houses introduced and passed resolutions commending Mr. Mitchell's years of legislative service.

Clarence, my dear friend, welcome. We are delighted to have you. And before you speak, I will yield to Mr. Butler.

Mr. BUTLER. Thank you, Mr. Chairman.

I appreciate also the opportunity to have you as a witness to enlighten us once more. Thank you for taking your time to share your views with us.

TESTIMONY OF CLARENCE MITCHELL, DIRECTOR, WASHINGTON BUREAU, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

Mr. MITCHELL. Thank you very much.

I am happy to say that I included some good things in my testimony in the way of compliments about members of this subcommittee. And I hope that you won't think that I am just trying to reply in kind, because they are part of my written testimony and I mean them very sincerely.

As you noted, Mr. Chairman and members of the subcommittee, I am director of the Washington Bureau of the NAACP and chairman of the Leadership Conference on Civil Rights.

I thank you for this opportunity to testify in support of the joint resolutions being considered by the subcommittee; each would amend the Constitution to provide for representation of the District of Columbia in the Congress.

The fact that one of these resolutions was introduced by the distinguished Delegate from the District, the Honorable Walter E. Fauntroy, is a strong argument in favor of its support. Mr. Fauntroy has a long history of involvement in constructive action in the District of Columbia, as well as on the national scene. He has done much to move the Nation forward so that all of our citizens might share in the

bounty of our democracy. His election by the people of the District, after they received a measure of self rule, is a tribute to his record, and an assurance that the voters in the Nation's Capital exercise mature judgment in selecting their officials.

Indeed, it is my personal opinion—and I travel a great deal, Mr. Chairman and members of the subcommittee—that the Mayor and the City Council of the District are among the most effective and highly qualified city officials in the Nation.

Since coming to Washington, as the Director of the Washington Bureau of the NAACP, I have participated in seeking passage of legislation to give statehood to Alaska and Hawaii. One of my great friends was Ernest Gruening, who for many years had been interested in civil rights, and I believe served as an appointed Governor of Alaska and subsequently became a Senator from that State.

It was never clear to me why this legislation was opposed by those who were against it. But I am sure that all would now agree that the admission of these two great States to the Union is one of the brightest chapters in the history of recent times.

The NAACP has consistently supported home rule for the District of Columbia. We have also supported the right of the District's Representative in Congres to have a vote, as well as a voice. This recognition of the rights of citizens of the District of Columbia seems so elementarily fair that one immediately compares it with the fight for Alaska and Hawaii statehood.

Just as it was difficult to see any valid reason for denying statehood to Alaska and Hawaii, it is equally difficult now to see any valid reason for failing to pass one of the resolutions that would give the District a vote in Congress.

I think I should interpose at this point, Mr. Chairman, and say that I am aware of the fact that these resolutions do not propose statehood, but do give, within the constitutional framework, as the authors see it, an opportunity to have two Senators and a Member or Members in the House, depending upon the population.

During my service as a member of the U.S. Delegation to the Seventh Special and 13th General Sessions of the United Nations, it was my good fortune, on behalf of the United States, to welcome several new nations into membership in that body. As I studied the composition of the United Nations, including the new countries that joined during my period of service, I was impressed by the wide variations in the populations of countries therein.

Yet, in spite of the wide differences in populations between let us say the United Kingdom, which I think has about 55 million people, and Cape Verde, which is just a little string of islands off the coast of Africa—I think they have about 290,000 in that population; both have the right to speak and to vote on matters that affect the entire world.

Surely, our country should be wise enough to give our own citizens the right to have voting representation in our highest legislative body of the land—and I might say, I think it is also the most respectable and honorable legislative body in the world. I do not share the views of those who are always trying to downgrade the Congress. I think it is a terrible tragedy in our country, that there are those who seek to impugn the good name of this body. If ever they succeed in discredit-

ing the Congress of the United States with calumny, it is my opinion, that will be the end of democratic government in our Nation and I think the fallout would mean the end of democratic government in the world.

As we all know, the residents of the District of Columbia pay taxes like all other citizens. They are called to serve in the Armed Forces in time of war and they are expected to carry their fair share of the Nation's burdens in time of peace. I note particularly the following portion of Mr. Fauntroy's testimony presented to this subcommittee on August 3, 1977. And I quote:

> Despite this tradition of representative government, District residents do not enjoy the same rights as every other American. They are relegated to the status of second class citizens. They have no representation in the Senate of the United States, and they have only token representation in the House of Representatives.
>
> D.C. has no voting congressional representation, despite the fact that District residents pay more than $1 billion every year in federal taxes, despite the fact that the per capita tax payment for District residents is 77 dollars above the national average, a payment only exceeded by seven states; despite the fact that the population of the District of Columbia is larger than that of 10 states, including Alaska, Delaware, Idaho, Montana, Nevada, New Hampshire, North Dakota, South Dakota, Vermont and Wyoming. * * *

It is a source of great comfort to know that these resolutions are being considered by the most able and effective chairman, Congressman Peter Rodino, and his colleagues who have long records of working for the protection of human rights.

The chairman of the Subcommittee on Civil and Constitutional Rights, Representative Don Edwards of California, has an unusual personal dedication to justice. Unfortunately for the country, keeping a watchful eye on whether civil rights laws are being enforced is not always a very attractive responsibility. Not many Members of the Congress would want to assume that very important mission. All of us know that Congressman Edwards has accepted this duty as subcommittee chairman and has ably worked to make certain that the executive branch of Government does not lag in living up to the requirements of the laws in this field.

Mr. Rodino's leadership, supported by both Republican and Democratic colleagues has made it possible to continue the clearance and passage of civil rights legislation. It will be remembered that clearance and passage of the first civil rights bill in the 20th century came in 1957 under the bipartisan leadership of Representative Emanuel Celler, Democrat of New York, and the late Kenneth B. Keating, Republican of New York.

Most of the civil rights bills passed subsequently had the able guidance of Mr. Celler and Congressman William McCulloch of Ohio who succeeded Congressman Keating as the ranking member on the Republican side.

Now, with Mr. Rodino, we have Representative Robert McClory of Illinois as the ranking member of the minority. Mr. McClory is also a veteran of the years when the full Judiciary Committee worked so hard and so constructively to fulfill the Nation's promises of fairness to all of its citizens.

It is my hope and belief that the spirit which has motivated this committee in its consideration of civil rights legislation will also characterize its handling of these resolutions. If that happens, as I believe

it will, we can look forward to the swift approval of the resolution to amend the Constitution to provide for voting representation of the District of Columbia in Congress.

And I would say to Mr. Butler that my observation of his conduct in the handling of voting rights legislation was, in my judgment, exemplary, even though we were in disagreement. The reason I say that is, I think in this country, we have plenty of room for people of differing points of view. But I think one always holds a standard of fairness in hearings and when witnesses testify, and Mr. Butler always lived up to that standard. So, I am optimistic about the consideration of this legislation.

I thank you gentlemen for letting me be heard.

Mr. EDWARDS. Thank you very much, Mr. Mitchell. And I thank you for reminding us that this past decade of effort has been made by both sides of the aisle.

We all know that Mannie Celler could not have gotten through the various civil rights bills of the late 1950's and the early and middle 1960's without the strong and able support of Bill McCulloch. We would not have had the votes without the thoughtful Republicans who helped us so much.

I appreciate your reminding us of that.

The only question I have is: Can we count on help from the various civil rights organizations throughout the country that you work with, and of course, the nationwide NAACP?

Mr. MITCHELL. That is correct, Mr. Chairman. We have about 1,700 branches of the NAACP and of all them, if our national conventions are indicative of the climate in our organization and I think they are, want to see the kind of representation in the District of Columbia which will give its citizens the right to have the voice and the vote in both Houses of Congress.

Let me also say that it is the feeling of the 140 or more organizations that represent the Leadership Conference, of which I am chairman, that this should happen. We, as organizations, have been working together for 28 years and we move on issues by consensus. Therefore, when we adopt a position, it represents the broad consensus of our constituent organizations.

Mr. EDWARDS. It is going to take a national effort. We need the support of every community of the United States.

Mr. MITCHELL. I agree.

Mr. EDWARDS. Mr. Volkmer?

Mr. VOLKMER. For the record, Mr. Mitchell, what is your position on retrocession? that is ceding the District of Columbia back to the State of Maryland.

Mr. MITCHELL. I have reviewed that, and I am a resident of the State of Maryland. I have been commuting to Washington for 40 years. I think the Maryland Legislature would find it unacceptable to have the District added on as a part of the State of Maryland. Let me also point out that it is my recollection that the portion of Maryland which was ceded to the Federal Government and is now the District of Columbia was ceded in perpetuity. Thus, as a practical matter, it is now the property of the Government of the United States and not just a Federal enclave in a sovereign state. So, I would think it would be very unfortunate to mix these two groups.

I must say that, in my opinion, there is more homogeneity in the State of Maryland, because after all, we are essentially people who have been living together for 200 years or more. But in the District, the population is much more diverse, much more cosmopolitan. And it is my view that there would be some difficulty on both sides in trying to adjust to each other, if we were in one State.

Mr. VOLKMER. Is it fair to say, you prefer District voting representation in the Senate and House, rather than retrocession?

Mr. MITCHELL. Yes, indeed, I would. Thank you for giving me the opportunity to say that.

Mr. EDWARDS. The gentleman from Virginia, Mr. Butler.

Mr. BUTLER. Thank you, Mr. Mitchell, for your comments. I would add, of course, that I am going to accede to your position in this instance if I heard it correctly and understand exactly what it is. I am too much of a gentleman to say that with reference to the Voting Rights Act I was entirely right and you were wrong in that instance. We have advanced voting rights in those States not 1 inch since we passed that law. If we had done it my way I think we would have gotten along further, but I am too much of a gentleman to bring that up now. [Laughter.]

But I would like to say, sir, that I am concerned about the question raised about what you can do toward ratification of a proposed constitutional amendment. In the 10 States, for example, mentioned by Mr. Fauntroy, how strong is your chapter in South Dakota?

Mr. MITCHELL. Well, I believe we only have one chapter in South Dakota. But our organization is like the grain of yeast that was used to leaven the bread. In my judgment, and I am happy to say history supports this, although we may have only one chapter, there are so many fair-minded people who would rally around this issue that I have no doubt we would be able to do it in South Dakota.

I once lived in Minnesota where the black population was small and where we only had three chapters of the NAACP; one in Duluth, one in St. Paul and one in Minneapolis. Nevertheless, I was able to get through the State legislature legislation which prohibited discrimination in the sale of automobile liabilty insurance.

And I think that we would have the same experience in South Dakota or any of those other States mentioned.

Mr. BUTLER. Well, I share your curiosity about that, because I do think you have to recognize that we are asking the States to give up their power, or a portion of that power at least, in providing equal representation in the Senate. It takes only 13 States which fail to pass in order to not ratify a constitutional amendment.

So I am genuinely concerned that we may be asking too much and therefore jeopardizing the whole issue. I begin to feel that representation is an idea whose time has come.

Along those lines, though, the House resolution has been amended to include not only representation in Congress, but attributes of statehood such as election of President and Vice President and article 5 of the Constitution. The significant part of that is that we would also include the District of Columbia as two-thirds of the States for the amendment process generally.

Are those things significant in the overall question before us? Is that addition worth the load it adds to the constitutional amendment?

Mr. MITCHELL. Well, I don't think it adds a load. I think it contributes flexibility in light of the closing clause in section 2 which contains the words, "and as shall be provided by Congress." It seems to me, this gives us an opportunity to take a second look, after the amendment is ratified, and to do the things, which Congress in its wisdom might feel advances the total cause.

With respect to the diminution of influence in the Senate of the United States, I included in my testimony references about the admission of Hawaii and Alaska, because for many years they were kind of like a battledore and shuttlecock; it was contended that the Republicans didn't want Alaska in because it would mean the election of a Democratic delegation from that State, and some souls on the Democratic side weren't too enthusiastic about Hawaii because they thought it would mean the addition of a Republican delegation.

As we have seen, when those States became a part of the Union, they elected, as in the case of Alaska, a Republican and a Democratic Senator. As for the State of Hawaii, they have added a new dimension, in that they have given us persons whose ancestry is from Asia. And I think it is an asset to our country that in the Senate of the United States visitors from the Asian continent looking down into the Senate Chamber can see persons, like themselves, who are citizens of the United States, helping to make the laws of this Nation.

A final footnote: I would say that I am indeed grateful to your gentlemanly reference to the voting rights bill. That is one of the characteristics which you have that I admire and try to emulate. I would say that one of the vindications for those who worked so hard in moving the voting rights legislation through Congress was the fact that all, as in the phrase of the Bible, "On these hang all the laws of the prophets."

I believe the State of Mississippi now has 300,000 black registered voters; whereas, prior to the Voting Rights Act, there were a couple of hundred. In 1976, without the State of Mississippi, the Presidential election might not have come out the way it did, and we might have been in the difficulty of trying to resolve just who was elected in the House of Representatives.

So I think that from a statistical and an historical standpoint, the voting rights legislation was worth the effort. And your willingness not to be an obstructioninst, in my opinion, more than compensates for any views that you might have had, then or now, against the bill.

[Laughter.]

Mr. BUTLER. Thank you.

I do appreciate, also, the value of Alaska and Hawaii, as you mentioned. I do not think, however, that we can go so far as to suggest to my Republican colleagues the strong possibility that we might have a complete turnabout in representation and perhaps wind up with a Republican Senator in Congress from the District of Columbia.

[Laughter.]

Mr. MITCHELL. Well, I never underestimate the flexibility of the Republican Party in Congress. [Laughter.]

And the reason is, when we were working for passage of the 1964 Civil Rights Act, we had a lot of sessions over at the White House about where we were going to get the votes to do various things. There were always those who seemed to think that we were going to get solid

opposition from the Republican Party. That simply was not the case. There was a team of Republicans who worked with us. Congressman McCulloch was a tower of strength in rallying his colleagues.

I made one mistake in that process. Don Rumsfeld was a Member of the House at that time. I saw a story in the newspaper which said that Don was going to vote against us on civil rights. We had a meeting with the Republicans and in the course of the meeting, we made an assessment of the possible votes. I said, "Well, yesterday, I thought we had 51 votes. I think today we only have 50."

And somebody said, "Why do you think that?"

And I said, "Well, because Congressman Rumsfelt is quoted in the paper as leaving us."

He was sitting there and he said, "That's not true. I am with you."

And he was. He did vote with us.

So as I said; I never underestimate the flexibility of the party, nor believe everything I read or hear about what position it will take.

Mr. BUTLER. Thank you.

Mr. EDWARDS. Mr. McClory.

Mr. MCCLORY. Thank you, Mr. Chairman.

And thank you, Mr. Mitchell for your generous remarks, and I am proud indeed to have worked in support of the enactment of the 1965 Voting Rights Act and worked with you in connection with other civil rights legislation which has been developed since that time.

I cannot help but feel that this has been most salutary toward the development and growth of our Nation. And I am anxious now to try to correct what I think is an inequity and a defect in our system—we do not have representation in the Congress in this large population of the District of Columbia.

I would ask a couple of questions that may relate to excuses or may appear as elements of opposition to this constitutional amendment.

For one thing, it is charged that a very high percentage of the population in the District of Columbia actually, although they reside here, they do not vote here. They vote some place else and they are represented in the Congress in the place where they vote.

Do you have any figures as to the percentage of the population of the District of Columbia that actually votes elsewhere?

Mr. MITCHELL. I don't have those figures, Mr. McClory, but I will try to get them. I can give you a horseback opinion, which is—the persons who have residence elsewhere but who live in the District of Columbia, are in the minority. It has been my impression over the years that most of the people who come from other areas are white and they have moved to Montgomery and Prince Georges Counties and also to nothern Virginia. In my State of Maryland, we have a very substantial number of persons from out of the State who actually hold residence in other areas and live in those two counties. I would say that the majority of the people of the District of Columbia are in fact bona fide residents and potential voters. I do say that I think the people here who are eligible to vote have not, in all instances, exercised that right, but unfortunately, that is characteristic of the country as a whole. There would certainly be more of an incentive to vote if District residents knew they had not only a voice but a vote.

Mr. McCLORY. In the legislation which I assume you and I are supporting, House Joint Resolution 554, it provided that the District of Columbia would have representation, the number of Representatives in the Congress, as if it were a State, in the same manner as if it were a State.

How would the congressional voting district be established, in your opinion? In the case of a State, of course, they are established by the State legislature. What device would we use for establishing congressional districts in the District of Columbia, if this should be approved and ratified?

Mr. MITCHELL. Well, actually, I would pin my hopes, as I said, in that clause in 554, in section 2. I would think that duty ought to be carried out by the Congress, working, as best it can, with the people of the District of Columbia. I don't see such an approach as a serious problem. If, based upon population, the District were entitled to more than one Representative in the House, such districting would be fair.

Mr. McCLORY. Thank you, Mr. Mitchell.

Mr. EDWARDS. Thank you very much, Mr. Mitchell.

We keenly appreciate your helpful testimony and we are looking forward to your continued assistance on this great enterprise in which we are now engaged.

Mr. MITCHELL. Thank you.

Whenever you blow the bugle, Mr. Chairman, I join your army.

Mr. EDWARDS. Our next witness is our distinguished colleague from Arkanasas, Ray Thorton. Mr. Thornton was formerly a member of the House Judiciary Committee. He sat with us during the difficult months of impeachment. He made a great contribution. Mr. Thornton is also former attorney general of the State of Arkansas.

Raymond, we are delighted to have you here and look forward to your testimony, and you may proceed.

TESTIMONY OF HON. RAY THORNTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARKANSAS

Mr. THORNTON. Thank you very much, Mr. Chairman.

Don, members of the subcommittee, I deeply appreciate the opportunity of appearing again before my former colleagues and the new members of the Judiciary Committee.

The subject matter that you are involved in is one of great importance to the people of the District of Columbia. It is out of a sense of fairness and justice to the people throughout the United States, and because of the sense of importance that is attached to these proceedings that I asked for the time to come and discuss with you a proposal which I think would accomplish in a much faster and more suitable way the worthwhile objective of providing voting rights to the residents of the District of Columbia.

I have a prepared statement which has now been handed to the committee. And Mr. Chairman, if it is appropriate, I would like to ask that that statement be made a part of the record, and that I might summarize it briefly and respond to questions.

Mr. EDWARDS. Without objection, it is so ordered.

Mr. THORNTON. Thank you very much, Mr. Chairman.

[The prepared statement of Hon. Ray Thornton follows:]

STATEMENT OF HON. RAY THORNTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARKANSAS

Mr. Chairman, I want to thank you for this opportunity to address the question of how best to provide residents of the District of Columbia the opportunity to vote for Members of Congress and the Senate of the United States.

Several alternatives have been suggested as a means of accomplishing this objective:

First, the District of Columbia might be admitted into the Union as a fifty-first state.

Second, a constitutional amendment might be proposed and adopted to grant to residents of the District power to elect members of the House of Representatives, and possibly members of the Senate.

Third, the District of Columbia might be retroceded to the State of Maryland, either totally, or with a small, uninhabited, Federal enclave carved out and retained as a District.

There are obvious arguments for and against each of these proposals.

The first and second options are dependent upon either constitutional amendment, or formal admission as a state, and consequently require much time, and overwhelming support from all of the several states. Arguments have even been advanced that unanimous consent would be required to permit a non-state to elect members of the Senate.

The First and Third options would destroy the unique character of Washington, D.C. as the Federal City, open and accessible to all citizens of the 50 states, and responsive to national needs and priorities.

However, there is a fourth alternative which should be given careful and thoughtful consideration by this Committee. I believe that this fourth alternative: (a) will meet constitutional standards, (b) can be accomplished by a change in statutory law, (c) need not result in a loss of the special character of Washington, D.C. as our nation's Federal City, and (d) would provide voting representation in a manner that would be fair to the residents of the District, and to all of the citizens of each of the 50 states.

The Fourth alternative is to retrocede to Maryland the rights of District residents to vote in Maryland elections.

In making this retrocession the United States could retain, co-extensive with the present geographical description of the District, the same powers and authority maintained by the United States in each of the Federal installations such as arsenals, forts, dock-yards and similar facilities located at various places throughout the United States.

Residents of such federal installations have long enjoyed full voting rights within the state in which the facility is located, and the population of such installations is included in the census used in determining the apportionment of Representatives. Accordingly, should my suggestion be followed, the population of Washington, D.C. would result in the addition of 2 new Representative districts to those presently apportioned to the State of Maryland, and the votes of the District residents would have a significant effect upon the State's selection of Senators.

This Fourth alternative will meet constitutional standards:

The Constitution does not contain language forbidding voting representation to District residents. As a matter of historical precedent, it is interesting to note that District residents voted in the Maryland elections of 1800, and I have been unable to find any language in the Constitution or in court decisions concerning the status of the District which precludes their voting in Maryland elections now.

The disenfranchisement of District residents stems from a negative inference that the provision of Article I and the 17th Amendment providing for the election of Senators and Representatives of the several "States", by silence excluded from voting rights any United States Citizens who were not then residents of a particular state.

However, Article I, sections 2 and 3, and the 17th amendment are not the only constitutional provisions relevant to the status of the District of Columbia in the Federal system. Article I, section 8, clause 17, gives to the Congress the power "To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the States in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings."

It should be noted that the constitutional provision providing for the establishment of the District of Columbia is the same provision which gives Congress *"like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings."* Residents of those Federal reservations may vote in the States where those reservations are located, and the constitutional provision being identical, there is no reason why District residents should not be accorded the same privilege.

The Fourth alternative can be accomplished by a change in statutory law.

Based upon the Constitutional provisions relating to the District and Federal reservations, it seems clear that retroceding to Maryland any elements of sovereignty which might distinguish the District of Columbia from other Federal reservations is an action which could be accomplished by statute and which would offend no constitutional principle. As is well known the portion of the District which had been granted by Virginia was retroceded to that state in 1846. As Representative Charles E. Wiggins pointed out in his separate dissenting views on H.J. Res. 280 in the 94th Congress, it seems unlikely that any adjacent State to which such retrocession applies would be required to consent to such action.

The Fourth alternative need not result in the loss of the special character of Washington, D.C. as our nation's Federal City.

As contrasted with proposals to admit the District as a fifty-first state, or to retrocede to Maryland all of the geographical area of the District, with the possible exclusion of a federal enclave, this proposal would continue to provide the constitutional powers and responsibility of the Congress to continue to legislate with respect to the District of Columbia, with a few elements of sovereignty such as drawing the boundaries of Congressional Districts, retroceded to the State of Maryland.

Under its retained powers and responsibilities, Congress could, of course, continue to develop the principles of home rule which it has initiated.

The Fourth alternative would provide voting representation in a manner that would be fair to the residents of the District, and to all of the citizens of each of the 50 states.

At the outset it should be emphasized that it is not enough that a proposal be ultimately fair. It must be practical and obtainable as well. Considering the hazards and uncertainties of ever accomplishing the desirable goal of enfranchising District residents by Constitutional amendment led our distinguished colleague, Representative Elizabeth Holtzman to urge, in supplemental views to H.J. Res. 280, this Committee to explore the possibility of providing the District of Columbia with representation through the normal legislative process, as recommended by Representatives Hungate, Butler, Kindness, and myself during the 94th Congress.

A statutory proposal can be quickly prepared and adopted. It could be modified if modifications should be required, but this approach would automatically adjust the voting representation of the residents of the District of Columbia in the House of Representatives in accordance with population, and it would afford residents of the District an impact upon the selection of Senators without diluting the representation in the Senate from each of the 50 states.

For the above reasons, I ask that the Committee develop legislation to accomplish the important goal of enfranchising residents of the District of Columbia in a prompt, fair, and workable manner through the legislative process.

Mr. THORNTON. Among the several alternatives which have been discussed in providing voting representation for the residents of the District of Columbia are, first, that the District might be admitted as a 51st State, or second, that a constitutional amendment might be proposed and adopted to grant to the residents of the District voting rights to elect Members to the House of Representatives and possibly Members of the Senate. Some distinction can be made between the two bodies for the purpose of that amendment.

A third suggestion which has been made periodically in the past is that the District of Columbia might be retroceded to the State of Maryland, either totally, or carving out a small Federal enclave which would presumably be uninhabited, and then the residents of the retro-

ceded portion would be citizens of the State of Maryland entitled to all voting rights of citizens of any State.

There are obvious arguments which the committee is well familiar with, both for and against each of these proposals.

The first and second options have the disadvantage of being cumbersome and slow, dependent upon either a constitutional amendment or a similarly slow process of admission of the District of Columbia as a State.

It has even been suggested that if a constitutional amendment is adopted that unanimous consent might be required to permit a non-State to elect Members of the Senate.

The first and third options, that is, admission as a State or retrocession of the territory to Maryland, would destroy the unique character of Washington, D.C. as a Federal city.

There is, I think, a fourth alternative, which I discussed briefly with members of the committee at the time we were working on this problem at the end of the 94th Congress and which I would like to reemphasize today:

That fourth alternative would, I believe, meet constitutional standards. It is possible to accomplish it by changing statutory law. It need not result in a loss of the special character of Washington, D.C. as our Nation's Federal city, and it would expedite providing voting representation in a manner that would be fair to the residents of the District and to all citizens of each of the 50 States.

This fourth alternative is to retrocede to Maryland the rights of District residents to vote in Maryland elections, at least for Federal representation.

Now in order to understand this alternative, you have to consider that sovereignty can be divided, not only geographically, but also by function, and that it is not necessary to have a geographical retrocession of all rights, but that it is possible to retrocede certain aspects of sovereignty and to make the division, not according to boundary lines drawn on a map, but upon the boundary lines drawn upon a list of rights and privileges so that those rights and privileges which relate to voting can be retroceded to Maryland, while maintaining the existence of Washington, D.C. as a national city.

I would like to suggest that this fourth alternative will meet constitutional standards because the Constitution doesn't contain any language forbidding voting representation to District residents. As a matter of fact, it is well known by the members of this committee that Maryland admitted the District of Columbia residents to vote in their elections in 1800.

I have been unable to find any language in the Constitution or in the court decisions concerning the status of the District which precludes their voting in Maryland elections now.

The disenfranchisement stems from a negative inference that the provisions of article I and the 17th amendment, which provides for the election of Senators from each of the several "States," by silence excluded from voting rights any U.S. citizens who were not then residents of a particular State.

However, those provisions in article I, sections 2 and 3, and the 17th amendment, are not the only constitutional provisions which are relevant to the status of the District of Columbia in the Federal system.

I think it very important that the committee consider article I, section 8, clause 17, which gives to the Congress:

> The power to exercise exclusive Legislation in all Cases whatsoever over such District (not exceeding ten Miles square) as may be Cession of particular States and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings.

What I am trying to emphasize, Mr. Chairman, is that the same constitutional provision which relates to the exclusive legislative authority of the Congress over the District of Columbia, also applies to each of the military installations, the forts, the arsenals, the bases, which belong to the United States, in the several States throughout the country. I want to remind members of this committee that the residents who live on those Federal installations are counted for census purpose and are entitled to vote in the elections of the State in which those Federal facilities are located.

In essence, Mr. Chairman, what I am suggesting is that this committee could retrocede to the State of Maryland all the rights and appurtenances of sovereignty, which distinguish the District of Columbia from other Federal installations, leaving the same powers with the Federal Government as apply to an air base, a military installation, a fort or an arsenal.

This would allow the Congress to continue to exercise the legislative authority provided for in the same article which applies to both the District and other Federal establishments, and to grant such things as home rule to the citizens.

The advantage of this is that it can be done quickly by statute. The census would operate to provide at least two new representatives who could be elected by the people of this District, if this statutory provision were adopted. It could be done more quickly than any constitutional amendment could ever accomplish the same purpose.

And the residents of the District would have a significant impact upon the selection of Senators from the State of Maryland.

I want to earnestly ask this committee to give careful consideration to the possibility of accomplishing this needed reform by simple and positive statutory change.

If it is necessary to have a constitutional amendment then certainly the objective of achieving voting rights is sufficient to warrant that step. But a constitutional amendment is slow and cumbersome. It will be difficult to gain acceptance.

And I would like to earnestly ask that you give consideration to accomplishing this by the statutory means which I have described.

Mr. EDWARDS. Thank you very much. That is a very ingenious theory. Do you have any doubts about its constitutionality?

Mr. THORNTON. I have carefully reflected on this, and there are arguments as to how divisible sovereignty is. But I think that carefully drawn legislation to change the character of the District of Columbia to that which is similar to a fort or an arsenal could be enacted and would be sustained by the courts.

Mr. VOLKMER. Would the gentleman yield?

Mr. EDWARDS. Yes.

Mr. VOLKMER. I question the analogy you draw between the exclusive legislative power the Congress has over forts, arsenals and other Government installations and its legislative exclusive power over the District.

As I understand it, a fort or arsenal has usually been acquired by the Federal Government subsequent to the time the State becomes a State, and the fort or arsenal although owned by the Federal Government, remains a part of that State. The District, however, is property which was ceded to the Federal Government by the State of Maryland and is no longer part of Maryland.

Is such a distinction significant to your theory?

Mr. THORNTON. Well, if I may respond to that: I believe that the District of Columbia, as it now exists, was originally a part of the State of Maryland.

Mr. VOLKMER. Yes.

Mr. THORNTON. The act of cession did occur after the State of Maryland was a State and is a variation of the method by which Federal lands are acquired with the consent of the legislature of the State for purposes of arsenals.

I should also emphasize that the conclusion that you can do this by statute has been precedented by the action in 1846 of retroceding to the State of Virginia all that portion of the District which had been granted by Virginia.

Mr. VOLKMER. Therefore, you would retrocede to Maryland voting rights?

Mr. THORNTON. That is correct.

Mr. VOLKMER. Under your theory, are you retroceding more than voting rights? It seems to me, there is a two step process; you retrocede to Maryland the geographical area of the District of Columbia, and then in the same act retain Federal properties therein.

Mr. THORNTON. The retrocession would not be of geographical area. It would not be a total retrocession, but rather a retrocession of certain aspects of sovereignty.

It could be done as you described, by retroceding all and retaining part—in other words, you would suggest retroceding everything except what is retained. It might be that that would be the suitable way of describing the mechanism for change.

Mr. VOLKMER. Rather than doing it your way and saying we are going to retrocede the right to vote in congressional elections in the State of Maryland.

Mr. THORNTON. The question is: Which way would more appropriately describe the rights which are retroceded? One way would be to affirmatively list the rights which are retroceded and say we are retroceding those rights. The other would be to say we are retroceding all rights except those which are retained by the United States in the military arsenals, forts, et cetera, which are found throughout the United States.

Mr. VOLKMER. Thank you very much.

Mr. EDWARDS. How does this work for elections of Senators.

Mr. THORNTON. For the Senators you would have the population of approximately 750,000, approximately, of the District of Columbia who would be eligible to vote in the senatorial elections of Maryland.

This population would have a significant impact upon the selection of Senators from that State.

After one election, the Senators who would represent the State of Maryland would be very cognizant of their constituency within the District of Columbia. This would have the effect, also, of not diluting the representation in the Senate and thereby making it easier for a legislation like this to pass that body.

Mr. EDWARDS. Of course, under the one-person, one-vote rule, the two Members of the House of Representatives would not necessarily come from Washington, D.C.

Mr. THORNTON. That's correct. The redistricting lines would be drawn by the State of Maryland. In districting, it would be possible to either form the two districts as metropolitan districts in which the representatives would be clearly responsive to the voting constituency within the city, or you could have districts which reached into the city and into rural areas.

However, in looking at the makeup of population in this area, it would seem to me that any effort to subdivide the city and carry parts of the city out into the surrounding communities would result in the residents of the District of Columbia not electing just two representatives, but probably having a majority vote in three of four representative elections.

So I think it most likely to the districting which would be accomplished would be according to metropolitan lines.

Mr. MCCLORY. The problem that bothers me is this:

How do we establish these congressional districts? If we are going to establish congressional districts on the basis of a State legislature elected by voters from the State of Maryland without the participation of voters in the District of Columbia who are granted only the right to vote in the national elections, it seems to me that we are going to be confronted with a virtually insurmountable problem.

I would question that the Congress by legislation could grant voting rights to persons to vote in State legislative bodies.

Mr. THORNTON. My suggestion was that the voting rights be retroceded to the State of Maryland for Federal elections. However, I think it would be very difficult, once that retrocession occurs, for the State of Maryland not to permit voting of citizens of the District of Columbia for State elections as well.

With regard to the other question, Mr. McClory, I can only suggest that in my view the proposal is one that can be accomplished by statute, and I recognize that there might be an argument as to whether it could be done that way.

But I think the language of the Constitution, because this negotiation of voting rights is only inferentially drawn, and because deprivation of voting rights certainly is counter to the whole body of thought in the United States, legal presumptions would tend to validate a statute designed to accomplish the worthwhile objective of granting voting rights.

Mr. MCCLORY. If the Chairman would yield.

If I understand your position, it is not that the Congress should by legislation grant voting rights to these persons who are in the retroceded area to vote for members of the State Legislature of the State of Maryland. We would assume that if the right to vote in the

national elections, which we would have authority to do, is accomplished, we would hope or expect that the Maryland State Legislature would accord voting rights to these other persons.

Mr. THORNTON. I think you correctly describe my minimum position on it, that that would be our hope or expectation.

I think it might follow as a matter of law that the retrocession of voting rights would carry with it the full citizenship of these citizens within the State of Maryland. That is the optimistic side of the cession. If it does not carry that right with it, then it would be my expectation that the State of Maryland would soon extend that right.

Mr. MCCLORY. If the chairman would yield, I would just ask this one more question and then I will not ask for any more time.

Are you saying, then, that the retrocession that you now speak of would be complete retrocession of territories, such as the retrocession of District territory to the State of Virginia?

Mr. THORNTON. It would be complete, insofar as the rights which are under discussion are concerned, while maintaining the status of the District of Columbia throughout its entire geographical area in the same legislative control position as forts or arsenals.

Mr. MCCLORY. Thank you.

Mr. EDWARDS. Mr. Butler.

Mr. BUTLER. I thank the gentleman for his testimony. I appreciate your participating in this hearing.

I recall that I signed your views earlier, so I guess to the extent that I may take a different position today, I will resort to the flexibility which was alluded to by an earlier witness. [Laughter.]

I do have some reservations about this. For example, you are kind of hanging your hat on the historical accident that this area, the District of Columbia, happened to have at one time been a part of Maryland.

We use the language of retrocession to describe what would happen. But actually, what you are proposing is a simple statute which would say that for purposes of representation in the Congress of the United States, residents of the District of Columbia, shall be residents of the State of Maryland. And that is simply what you are proposing here.

Mr. THORNTON. That is a way of describing it. But actually, I would propose to recognize the difference which does exist. The United States is sovereign in the District of Columbia. And I am proposing to retrocede those aspects of sovereignty back to Maryland.

Mr. BUTLER. But the only aspect of sovereignty that you are retroceding is the voting aspect?

Mr. THORNTON. That is correct.

Wait a second, the voting rights, plus the right to the State of Maryland to do the redistricting and to take——

Mr. BUTLER. Well, that's a right they already have.

Mr. THORNTON. Right.

Mr. BUTLER. Well, I guess that's my next question. Clarence Mitchell suggested that Maryland does not want to do this. Does this require their assent?

Mr. THORNTON. Well, our colleague Charles Wiggins suggested in a supplemental view to the 1974 report that in his view the retrocession of rights by the United States to a State did not require the consent of the State involved. That is a significant question.

Mr. BUTLER. I expect that if we are going to expand their representation in the Senate, the number of people who vote, then we are denying equal suffrage under article 5 of the Constitution: no State will be deprived of its equal suffrage in the Senate. We are diluting the representation of Maryland when we say that you are not equal to others; because you have to let all these others——

Mr. THORNTON. That is based upon the assumption that the residents of the District of Columbia cannot be given treatment as residents as the State of Maryland. If they are residents of the State of Maryland, then Maryland like all other States would have two Senators.

Mr. BUTLER. What about State income tax?

Mr. THORNTON. It might be essential to retrocede taxing authorities along with representation authority.

Mr. BUTLER. Thank you.

Mr. EDWARDS. Mr. Volkmer?

Mr. VOLKMER. Let us carry that point further. If you also retrocede taxing authority, District residents, unless represented in the Maryland Assembly, would have no power to determine how those revenues would be distributed to the various State programs.

Mr. THORNTON. I agree. And the parallel that I described initially and which you helped to develop a possible alternative statutory way for accomplishing the same thing, namely retroceding all, but then retaining the rights which are appropriate to a fort, arsenal, or other Federal installation would accomplish just that.

The citizens, then, would for the same effect and purposes as the citizens who live at the naval air station at Pensacola have the right to vote in the State elections, et cetera.

Mr. VOLKMER. Have you given any consideration to the 23d amendment to the Constitution which gave the voters of the District of Columbia the right to elect or vote for the President and Vice President.

Your proposal, I assume, would not change this at all.

Mr. THORNTON. That is correct, but I want to thank the gentleman for bringing this up because it points out another very important feature of this proposal. When you accomplish something like this by constitutional amendment, you are very likely to make significant mistakes and the 23d amendment seems to me to have been a mistake in that it now provides for a lesser representation in the election of electors than the people of this area should be entitled to on a population basis. Constitutional amendments do not change with growth in population, or other circumstances.

Statutory retrocession such as I describe would accomplish that.

Mr. VOLKMER. Thank you.

Mr. EDWARDS. Are there further questions?

[No response.]

Mr. EDWARDS. If not, we thank you very much.

Mr. THORNTON. Thank you very much.

Mr. EDWARDS. Our next witness is Mr. David Junious. David, a high school student, has already received fame in Washington as an outstanding young person in the District. He shows great promise as a future civic leader of residents here.

David, you are indeed welcome this morning.
You may proceed with your statement.

TESTIMONY OF DAVID JUNIOUS, CITIZEN, DISTRICT OF COLUMBIA

Mr. JUNIOUS. My name is David Junious. For the past 5 years, I have lived in 2027 13th Street NW., in Washington, D.C.

I am a member of the youth counsel of the local NAACP. The last school I attended was Garnett Patterson Junior High School from which I graduated last year as valedictorian. Because of this, I have been lucky enough to win two scholarships.

Through my father, who is active in the NAACP here, we children have become interested in American history. In fact, one of my favorite subjects in school is history. Some time ago, my class studied the Constitution and the place it has in our lives.

I learned some interesting things that I feel are important for every American to know. I was taught that one of our most precious rights is the right to be represented in Government.

The Revolutionary War broke out because England wouldn't give the colonists that right. For that reason, I couldn't understand at that time why people living in the District of Columbia were not fully represented in our National Government. It has been 2 years since then, and I still haven't figured it out.

I found out that blacks were given the right to vote by the 15th amendment, and 18-year-olders were given that right by the 26th amendment. Then why am I not able to be represented here in Washington?

I am only 16, but I look forward to voting when I am older. I hope to be able to vote for someone who has power to represent me. I guess my family and I could move back to my old home in Sumter, S.C. But I am not sure if we can afford to.

Anyway, I like the District of Columbia better and I wouldn't want to leave my friends here. I wish someone could tell me what to do.

[Applause.]

Mr. EDWARDS. Thank you. That is a very eloquent statement, David.

I have one question for you. Do most of your friends agree with you on this issue? Are they also concerned?

Mr. JUNIOUS. Yes; they are.

Mr. EDWARDS. I am glad to hear that. Before you know it, you will be voting, and I hope you will be voting for U.S. Senators and for the U.S. House Members.

I yield to the gentleman from Virginia.

Mr. BUTLER. Well, I would not presume to tell you what to do. I think you are moving in the right direction and you don't need a whole lot of advice.

But I am curious; when did your folks move here from Sumter, S.C.?

Mr. JUNIOUS. Well, we moved here about 5 years ago.

Mr. BUTLER. And prior to that, were they voting in South Carolina?

Mr. JUNIOUS. Yes; they were.

Mr. BUTLER. And are they still voting in South Carolina?

Mr. JUNIOUS. Well, no, because they have moved up here now.

Mr. BUTLER. But they have not maintained their voting residence in South Carolina?

Mr. JUNIOUS. No, I don't think so.

Mr. BUTLER. Well, I congratulate you on a very fine and eloquent statement. It certainly is a very concise statement, which I commend to other witnesses.

[Laughter.]

Mr. BUTLER. You stated in a very concise manner the issue, and we appreciate your view of it.

[Applause.]

Mr. EDWARDS. The gentleman from Massachusetts.

Mr. DRINAN. Thank you, Mr. Chairman.

David, I want to say that that is the best statement that I have heard in 6½ years in Congress. [Laughter.]

I commend you. When our colleague here is a U.S. Senator, I hope you can take his place in the U.S. House of Representatives.

[Applause.]

Mr. EDWARDS. The gentleman from Missouri.

Mr. VOLKMER. I hope it is not that long because it would be about 8 years or so before that could happen.

Perhaps with your study of history, and it is good that you do have that interest, you have noticed that in many instances Congress moves very slowly, we feel, many times, too slowly. I am sure, however, that the time will come, when enough people, such as the gentlemen sitting next to you will succeed in this effort for full voting representation.

Mr. EDWARDS. David, thank you very much.

I am pleased to recognize the distinguished Delegate from the District of Columbia, Walter Fauntroy.

TESTIMONY OF HON. WALTER FAUNTROY, REPRESENTATIVE, DISTRICT OF COLUMBIA

Mr. FAUNTROY. Mr. Chairman, I thank you for your indulgence. I couldn't resist the opportunity to join David here and remind the committee and remind myself that I grew up in the neighorhood in which he lives. I, too, was valedictorian of the Garnett Patterson Junior High School class, and I could not help but remember that coming through the schools of that neighborhood, they taught me the Pledge of Allegiance and to sing, "My Country, 'tis of Thee, sweet land of liberty."

I sat on the third floor of the Garnett Patterson Junior High School in my first civics class. My teacher was Mr. Cook. And it came as a shock to me that having grown up reading the Washington Times-Herald, the Washington Post, and the Evening Star, week after week hearing about Members of the Congress voting for their people, their people back home, having read the Preamble to the Constitution, having been taught to sing, "My Country 'tis of Thee," I was shocked to learn that solely because I was born and grew up in the Nation's Capital, neither I nor my parents nor my neighbors would be able to do what every other American can do, and that is to vote for representation in this body which dominated all of our thoughts, because we knew that we lived in the Nation's Capital. We knew that downtown on Capitol Hill and at the White House, were the people that were elected by people all over this Nation to set policy.

And I share the kind of frustration I think that this young man has given to all of you by saying: What can we do?

And I certainly want to commend and thank him for lending this freshness and this basic understanding of our position here in the District of Columbia of voter representation for the District.

Thank you.

[Applause.]

Mr. EDWARDS. Thank you very much.

Our last witness today was to have been the very distinguished Senator from Maryland, Charles Mathias. Unfortunately, he is tied up in the Senate.

Without objection, his statement will be made a part of the record.

[The prepared statement of Hon. Charles McC. Mathias follows:]

STATEMENT OF HON. CHARLES McC. MATHIAS, JR., A U.S. SENATOR FROM THE STATE OF MARYLAND

Mr. Chairman. I am pleased to be here today before the Subcommittee on Civil and Constitutional Rights of the House Committee on the Judiciary. The subject matter before this subcommittee is something that has been close to my heart for the entire period of my service in both the House and Senate: Full voting representation for the District of Columbia in the Congress.

First, I want to thank the Chairman for extending me this opportunity to appear and testify. I am truly grateful to be able to be here and lend my support to an issue of human rights right here at home.

I think at this point that a little history may be instructive on just where we stand on this issue. In 1961 the Congress began to address the fundamental question of the barriers which stood between Democracy and the American citizens residing in the Nation's Capital. In that year, the 23rd amendment to the United States Constitution was enacted, enabling District residents to vote in presidential elections for the first time.

In 1971, Congress created the position of non-voting Delegate for the District of Columbia in the House of Representatives. In 1973, Congress provided significant self-government authority to the residents of the District.

The specific matter of full voting representation was last before the Senate during the 92nd Congress. It came in the form of a rider to the eighteen year old right-to-vote bill. A motion to table carried, and the matter has not been raised in the Senate since that time.

This is a truly significant piece of unfinished business on our national agenda. What we must do now to provide full human rights in the District of Columbia is to enact a constitutional amendment for full voting representation in Congress for its residents. We can do no less.

The President has expressed quite well his concern for human rights all over the world. What we need from him now, and what I hope the Presidential task force on the District of Columbia of which I am a member will convince him is necessary, is a strong voice of support for this fundamental proposition at home. The platform he ran on for President established this principle of full voting representation as one of his. We need a reiteration of that from him now.

There is, of course, no constitutional objection to providing voting representation for the District in both Houses. Committees of both Houses on numerous occasions have found ample authority in the Constitution for voting representation in the Senate as well as the House.

Consequently, the questions before this committee while technically legal ones are in fact much more than that. The foundation for the proposition contained in both resolutions before the committee is well established. The legislative and constitutional history is in place. The questions remaining relate to basic needs of people in a free and open society.

No less precious than the right of free speech, or the right to privacy, or the right to due process under the law, is the right to be represented in the elected bodies which determine the course of this country's future. To be excluded from this process, to have no voice when the votes are cast that may determine peace or war, depression or prosperity, is to be truly deprived. It is an invidious kind

of poverty. It is to have, even at this late date, "taxation without representation". Americans did not tolerate that injustice more than two hundred years ago and their heritage tells them that they should not tolerate it now.

Those, I think, are the real questions posed by these resolutions. The fulfillment of precious freedoms requires vigilance, perseverance and commitment. We all have a heavy responsibility to ensure that framework for equal participation by all Americans in the political process. I urge this committee to act favorably on these resolutions H.J. Res. 139 and H.J. Res. 142 and bring that goal one step closer to reality.

Mr. EDWARDS. We will now adjourn and meet again on this subject on the 21st of September, in this room at 9:30 a.m.

[Whereupon, at 11 a.m., the hearing in the above entitled matter adjourned.]

REPRESENTATION FOR THE DISTRICT OF COLUMBIA

WEDNESDAY, SEPTEMBER 21, 1977

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 9:35 a.m. in room 2237, Rayburn House Office Building, Hon. Don Edwards (chairman of the subcommittee) presiding.

Present: Representatives Edwards, Drinan, and Beilenson.

Also present: Thomas P. Breen, counsel; Ivy L. Davis, assistant counsel; and Roscoe B. Starek, associate counsel.

Mr. EDWARDS. The subcommittee will come to order.

Today marks the third day of testimony before this subcommittee on joint resolutions introduced in the 95th Congress which would amend the Constitution by giving full congressional voting representation to residents of the District of Columbia.

It's an auspicious day in a number of ways, but chiefly because we all know by now, with great delight, that today, through the office of the Vice President, President Carter will announce that he and his administration are in full support of the resolution proposed by our colleague, Walter Fauntroy, which will provide full voting representation for Washington, D.C. It is a constitutional amendment we all hope can be enacted by a two-thirds vote of the House and the Senate, hopefully, by early next year. We will do everything we can to move it along, now that the President has made this splendid announcement.

My congratulations to all the people, especially the local people, who were instrumental in convincing the administration that this was the right thing to do.

Our next hearing is set for Tuesday, October 4, at 2 p.m. in this room. As evidenced by our list of witnesses today, we have made every effort to bring together a cross-section of representatives to speak to this most important issue.

Our first witness this morning, and it is a great personal pleasure for me to introduce him, is our colleague from Connecticut, Stewart B. McKinney. In addition to being very knowledgable about District affairs, he has been and is an eloquent and effective spokesperson for full voting representation. As a matter of fact, since coming to Congress in 1971, he has served on the House Committee on the District of Columbia and is, currently, ranking Republican member of that committee.

In 1973, Mr. McKinney, along with former Congressman Gilbert Gude of Maryland, was instrumental in coalescing Republican sup-

port for District home rule. He has continuously worked to broaden the concept of home rule since that time.

Mr. McKinney has introduced House Joint Resolution 142, being considered by this subcommittee, which would provide for full voting representation.

Stewart, we thank you again for your continued and persuasive support. We welcome you, and you may proceed.

TESTIMONY OF HON. STEWART B. McKINNEY, REPRESENTATIVE IN CONGRESS OF THE UNITED STATES FROM THE FOURTH DISTRICT OF THE STATE OF CONNECTICUT

Mr. McKinney. Mr. Chairman, let me just say, informally, that it's a pleasure to be here. Your record of interest in civil and human rights, I think, is unsurpassed in this Congress. I really appreciate the fact that you are chairing these hearings, as I have high hopes that we will have success.

You know, quite often it's difficult to get people to go on the District of Columbia Committee. As a freshman, I went to Minority Leader Gerald Ford and said, "I want to be on the District Committee." And he said, "Why?" And I said, "To abolish it."

Now, we haven't succeeded with that, and we haven't succeeded with true home rule, but we're getting there. And I know that under your leadership we'll probably succeed—at least I hope we'll succeed.

Having served on the District of Columbia Task Force that the President established, I was delighted to hear that the President has come forth—or is coming forth—as strongly as he has on this subject. With that added emphasis, maybe victory is going to be ours at last.

Mr. Edwards. Well, congratulations to the task force, and to the work you did on it. That, I'm sure, was very instrumental.

Mr. McKinney. Well, it'll be a happy day for me, Mr. Chairman, when people of this city can break the bottle of champagne over the demise of the District Committee of both the House and the Senate.

Mr. Chairman and members of the Subcommittee on Civil and Constitutional Rights, it is a pleasure to appear before you today to express my views on the subject of full voting representation for the District of Columbia. I am here to share with you this morning my concern in this continuing congressional debate over the suffrage rights of 750,000 District residents, citizens of these United States. As you know, I have long been a supporter of full voting representation for the District of Columbia.

More than 200 years after a revolution was fought to end taxation without representation, District residents are still denied this basic right enjoyed by all other American citizens.

Since 1800, when District residents last voted for Members of Congress, there have been more than 150 attempts to regain suffrage. Today, those who support full voting representation include not only citizens of the District, but American citizens across the country, a large number of my colleagues in Congress, and both the Democratic and Republican Parties in their respective 1976 platforms.

Reportedly, in 1969, 1970, and 1971, the League of Women Voters of the United States conducted a nationwide petition drive in support of

an amendment for full voting representation and in a 1-week period secured 1¼ million signatures. I join that support.

And it's interesting to add that the initial question I was asked when the League of Women Voters first interviewed me as a candidate for Congress in my first campaign, was would I support home rule for the District of Columbia.

If our advocacy of human rights is to be regarded as credible and not counterfeit, the citizens of the Nation's Capital have a right to be fully enfranchised in the National Legislature. Presently, we have an elected Delegate to the House of Representatives who is not entitled to vote except in committee. A voice without a vote is not representation. Even voting representation in the House alone, while a partial step, would not be representation in the American tradition of democracy. Residents of the District of Columbia will continue to be less than first-class citizens if they have no vote in the Senate.

Fundamental to our concept of American democracy is that none of the obligations of citizenship be imposed upon citizens without "the consent of the governed" through their representatives in both Chambers of Congress—the House and Senate. But the facts reveal that to reside in our capital city as an American citizen is to have all the obligations of citizenship without the corresponding vote in the House or Senate to register their consent or dissent in the deliberations of their National Government. District residents have fought and died in every American war since the District was founded. Surely those who choose to reside in the District do not do so in an attempt to avoid the obligations of American citizenship. Equity, alone, would mandate that District citizens be accorded the full rights of citizenship, including the right to suffrage.

The proposed amendment simply provides the people of the District with the right to vote in Congress and thereby meaningfully participate in the controversial debates which so vitally affect their lives. A nonvoting delegate is not the answer. It is the power of the vote in both congressional Chambers that is needed to guarantee full representation of the citizens of Washington, D.C.

Mr. Chairman, I might parenthetically state that the American cities, in the condition they're in, could full well use two more votes in the Senate and proper voting representation in the House to put forth the cause of the American city, which, as you know, is another great interest of mine.

Surely our Constitution can be amended in such a fashion as to resolve the political plight of the citizens of our Nation's Capital granting them the right to elect two Senators and the number of Representatives in Congress to which the District would be entitled if it were a State.

Nowhere does our Constitution forbid the grant of full representation to the citizens of the Capital. Furthermore, there is simply no justification for denying three-quarters of 1 million people, paying more than $1 billion in Federal taxes per year, a vote in deciding how that money is allocated.

I urge my colleagues in the House to use our Constitution in this grave instance as a shield and not a sword in protecting a constitutional right of all American citizens.

We must not engage in a worldwide campaign for human rights while, at the same time, deny the most basic democratic right to the residents of our Nation's Capital. Our campaign to encourage universal concern for human rights will have a hollow ring if we are not prepared to improve our own performance at home.

Mr. Chairman, it is interesting to note today on the radio the Government of South Africa has decided to have all white elections. They talk as if they say they're going to get a mandate from the people; they're going to get a mandate from the select few. And it seems to me, Mr. Chairman, that we in Congress have spoken with both tongues on this subject long enough. When I hear of a Rhodesian or a South African voting system, I am horribly reminded of a House of Representatives of the greatest democracy in the world that denies three-quarters of 1 million people the right to vote.

The President is, evidently, through the Vice President, going to support this legislation, which will be very necessary.

Because of our belief in basic democratic principles and our embarkment on a worldwide human rights campaign, we have an increased responsibility to insure that the rights of the poor and minority populations in this country are protected. The fact that we have disenfranchised some of our citizens is a violation of human rights here in our own backyard. This disgraceful and embarrassing situation must be remedied and Congress should not avoid this responsibility any longer.

I thank the chairman.

[The prepared statement of Hon. Stewart B. McKinney follows:]

STATEMENT OF HON. STEWART B. MCKINNEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CONNECTICUT

Mr. Chairman and members of the Subcommittee on Civil and Constitutional Rights, it is a pleasure to appear before you today to express my views on the subject of Full Voting Representation for the District of Columbia. I am here to share with you this morning my concern in this continuing Congressional debate over the suffrage rights of 750,000 District residents. Citizens of these United States. As you know, I have long been a supporter of full voting represenation for the District of Columbia.

More than 200 years after a revolution was fought to end "taxation without representation" District residents are still denied this basic right enjoyed by all other American citizens.

Since 1800, when District Residents last voted for members of Congress, there have been more than 150 attempts to regain suffrage. Today, those who support Full Voting Representation include not only citizens of the District, but American citizens across the country, a large number of my colleagues in Congress, and both the Democratic and Republican Parties in their respective 1976 platforms.

Reportedly, in 1971, the League of Women Voters of the United States conducted a nation-wide petition drive in support of an amendment for full voting representation and in a one week period secured one and one-quarter million signatures. I join that support.

If our advocacy of Human Rights is to be regarded as credible and not counterfeit, the citizens of the Nation's capital have a right to be fully enfranchised in the national legislature. Presently, we have an elected delegate to the House of Representatives who is not entitled to vote except in committee. A voice without a vote is not representation. Even voting representation in the House alone, while a partial step, would not be representation in the American tradition of Democracy. Residents of the District of Columbia will continue to be less than first class citizens if they have no vote in the Senate.

Fundamental to our concept of American Democracy is that none of the obligations of citizenship be imposed upon citizens without "the consent of the gov-

erned" through their representatives in both chambers of Congress—the House and Senate. But the facts reveal that to reside in our Capital City as an American citizen is to have all the obligations of citizenship without the corresponding vote in the House or Senate to register their consent or dissent in the deliberations of their National Government. District residents have fought and died in every American war since the District was founded. Surely those who choose to reside in the District, do not do so in an attempt to avoid the obligations of American citizenship. Equity, alone, would mandate that District citizens be accorded the full rights of citizenship, including the right to suffrage.

The proposed amendment simply provides the people of the District with the right to vote in Congress and thereby meaningfully participate in the controversial debates which so vitally affect their lives. A non-voting delegate is not the answer. It is the power of the vote in both Congressional chambers that is needed to guarantee full representation of the citizens of Washington, D.C.

Surely our Constitution can be amended in such a fashion as to resolve the political plight of the citizens of our Nation's Capital granting them the right to elect two Senators and the number of Representatives in Congress to which the District would be entitled if it were a state.

Nowhere does our Constitution forbid the Grant of full representation to the citizens of the Capital. Furthermore, there is simply no justification for denying three-quarters of a million people, paying more than $1 billion in Federal taxes per year, a vote in deciding how that money is allocated.

I urge my colleagues in the House to use our Constitution in this grave instance, as a shield and not a sword in protecting a Constitutional right of all American citizens.

We must not engage in a worldwide campaign for Human Rights while at the same time deny the most basic democratic right to the residents of our Nation's capital. Our campaign to encourage universal concern for Human Rights will have a hollow ring if we are not prepared to improve our own performance at home.

I believe that Presidential support is a necessary factor in gaining passage of this legislation in the Congress and I welcome his recent support.

Because of our belief in basic democratic principles and our embarkment on a worldwide Human Rights campaign, we have an increased responsibility to insure that the rights of the poor and minority populations in this country are protected. The fact that we have disenfranchised some of our citizens is a violation of Human Rights right here in our own backyard. This disgraceful and embarrassing situation must be remedied and Congress should not avoid this responsibility.

Thank you.

Mr. EDWARDS. We thank you very much, Mr. McKinney, or a very eloquent statement. We thank you for your support in the past and for what you are going to do for this important issues in the months to come.

The gentleman from Massachusetts, Mr. Drinan.

Mr. DRINAN. Thank you, Mr. Chairman.

Mr. McKinney, I want to echo those sentiments. Ever since you came to Congress with me in 1971 you have been in the forefront of this fight. I stand in your admiration, and hope that this time it's going to work. I remember very well the support that you mustered for us when we took the measure to the floor and almost made the two-thirds. I hope we will have a rerun of that and this time we're going to make it.

I commend you on the eloquence of your statement and welcome you back to the Congress. I trust that your help is going to be more vigorous than ever before, and that with your assistance this time we shall prevail.

I thank you very much.

Mr. MCKINNEY. I thank the gentleman very much, and you may rest assured on this particular subject my vigor will not diminish by 1 inch.

Mr. EDWARDS. Thank you very much.

The other witnesses scheduled for today have most graciously agreed to take questions from subcommittee members and counsel as a panel.

Our first panel of distinguished witnesses come as spokespersons for national and local constituencies: Sterling Tucker, Chairman of the City Council of the District of Columbia and president of the Metropolitan Coalition of Self-Determination for the District of Columbia, is an outstanding spokesperson for voters of the Nation's Capital; Ruth C. Clusen has recently begun her second 2-year term as president of the League of Women Voters of the United States, Mrs. Clusen is an eloquent spokesperson for human rights in this country and abroad; and Clarence Arata, executive vice president of the Metropolitan Board of Trade, comes to us representing more than 1,400 retailers and business and community leaders in the District of Columbia.

All three of you may come up and sit down. We are delighted to have you here.

And, Mr. Tucker, if you would, please, lead off.

TESTIMONY OF STERLING TUCKER, CHAIRMAN, CITY COUNCIL OF THE DISTRICT OF COLUMBIA, AND PRESIDENT, SELF-DETERMINATION FOR DISTRICT OF COLUMBIA-METROPOLITAN COALITION; ACCOMPANIED BY RUTH C. CLUSEN, PRESIDENT, THE LEAGUE OF WOMEN VOTERS OF THE UNITED STATES; AND CLARENCE ARATA, EXECUTIVE VICE PRESIDENT, METROPOLITAN WASHINGTON BOARD OF TRADE

Mr. TUCKER. All right.

Thank you very much, Mr. Chairman. We are, indeed, pleased to be here, and we want to congratulate you for your leadership in this effort and for the——

We are happy about the announcement, you have just shared with us, and we hope that this will inspire us all anew in continuing this great cause.

I do have a brief statement that I would like to read into the record, Mr. Chairman, and my colleagues here, I'm sure, will want to do the same, and then we'll be very happy to respond to questions.

Mr. EDWARDS. All right.

Mr. TUCKER. These hearings mark yet another occasion on which the House Subcommittee on Civil and Constitutional Rights had considered legislation to extend full citizenship to the residents of the District of Columbia. No fewer than 17 resolutions on voting representation in Congress for the District of Columbia have been introduced in the 94th and 95th Congress. And yet more than 200 years since our Nation's founding, some three-quarters of a million Americans are still denied one of the rights fundamental to our democracy, the right of meaningful participation in the political process through elected, voting representatives in our national legislature, the U.S. Congress.

As chairman of the City Council of the District of Columbia, I can personally attest that these disenfranchised 720,000 District of Columbia residents, discharge all duties asked of other American citizens. The District of Columbia has a higher per capita income—$5,657 in 1974—than any State in the country. Therefore, its residents

contribute substantially to the Federal revenues—very nearly the highest per contribution in the country. Is it consistent with democratic principle that we have no part in deciding how that money is spent? Our forebears found taxation without representation so abhorrent that they waged a war to end that abomination, or so they thought.

Distinguished subcommittee members, I hope you share my belief that those statesmen would strongly disapprove the disenfranchisement of 720,000 Americans who live in the District of Columbia. They would never have asserted that taxation without representation is tyranny and then added the footnote, "except in the District of Columbia."

Indeed, our Revolutionary War, as well as other wars in which we have felt forced to intervene, serves as a painful reminder that men and women are willing to die to safeguard the Democratic principles to which we all subscribe. War is, unfortunately, a subject that has figured significantly in the preservation of our democracy. The residents of the District of Columbia have not shirked this important responsibility of citizenship. In this century alone, 1,621 residents have died fighting in our Nation's wars; 1,621 Americans were considered full-fledged citizens for purposes of fighting, yet were not granted that status for purposes of voting for congressional representatives. I do not believe that this inconsistency was the intent of the framers of the Constitution when they inadvertently disenfranchised District of Columbia residents.

It is argued by some detractors of full congressional representation for the District of Columbia that if its residents feel so strongly about their right to elect voting representatives they should live elsewhere. I ask you, distinguished committee members, should American citizenship rights be subject to such qualifications? Should the right to be represented in our national legislature be separated from the freedom to live anywhere in our land? I have always been under the impression that the basic rights insured the citizenry of these United States, as delineated in the Constitution, are unconditional and reserved for each and every American.

Once again we are required to review the Democratic principles on which our Nation was founded. The words of the Declaration of Independence speak eloquently to those principles: "Governments are instituted among men, deriving their just powers from the consent of the governed;" these words should not, and cannot, be conveniently disregarded by denying full political rights to the residents of the District of Columbia.

As president of Self-Determination for the District of Columbia, I have been asked to represent the wide range of District citizens who have organized to obtain meaningful participation in their Government. We are assisted in that effort by nearly 3 million Americans from all across the Nation who have joined us, through our national coalition, to help us gain our rights. We District of Columbia residents do not have the power to change these anachronistic rules by which we are governed. Only these citizens of the 50 States, through their elected voting representatives in the U.S. Congress, have the power to change our status. We again ask you to make that change.

In this Congress which governs us, not one Member's vote is answerable to the people of the District of Columbia. It is, in fact, a Congress

whose constituents' interests are often directly contrary to the interests of District residents. The Congress, after all, is not elected by the District of Columbia citizens. We, like Americans in every part of the country, should be free to decide our laws for ourselves, correctly or incorrectly. If we truly believe in a free society, in the democracy we preach to the world, we should not and cannot have a double standard at home.

Mr. Chairman and honorable members of this committee, as the elected Chairman of the Council of the District of Columbia, I speak on behalf of the citizens of the District of Columbia who are unjustifiably, but effectively, disenfranchised. Thus, I enthusiastically support, and ask you to give your unanimous endorsement to, House Joint Resolution 139 which provides congressional representation for the District of Columbia in the House of Representatives and in the Senate of the United States.

The struggle to achieve suffrage for all American citizens has been a long and difficult one. The right to vote was extended to American citizens who were black in 1870; female, in 1920; and 18 years of age in 1971. The direct election of Senators by most of the citizens of these United States provided a more democratic Government in 1913. In 1971 we Americans residing in the District of Columbia were granted one long overdue opportunity at the polls, we were permitted to vote for the President and Vice President of the United States. This 23d amendment established the legal precedent for the amendment being considered today.

It is now more than 200 years since the founding of our Nation, and I sadly report that the struggle for full representation in Congress for the District of Columbia remains a dream. Let 1977 be the year to end the struggle and fulfill that dream. Let us, in 1977, finally have a democracy for all Americans.

Thank you, Mr. Chairman.

Mr. EDWARDS. Thank you, Mr. Tucker.

Our next witness, Ruth C. Clusen, president of the League of Women Voters of the United States.

Mrs. Clusen, it is nice to have you back.

Mrs. CLUSEN. Thank you, Mr. Chairman. I was thinking as I sat here that I've appeared before this committee any number of times in the past few years, and as much as I enjoyed that experience, I hope this is, indeed, the last time.

It has always been a matter of great concern to the League of Women Voters that a basic right, representation in Congress for citizens, has not been granted to the residents of the Nation's Capital. I am here again today to renew our firm support for representation for the District.

We have felt particularly strongly about this because the League was born in 1920 out of the struggle to enfranchise women, and, so, we began very early in our history trying to seek redress for this other disenfranchised group, the citizens of the District of Columbia. Direct representation in Congress and in the electoral college for the citizens of the District became a part of our program in 1924, and over the years our members have pursued the goal of full representation and home rule. In 1961, we actively supported the ratification of the 23d amendment which gave the citizens of the District of Columbia the

right to vote for President and Vice President and gave the District of Columbia three electoral votes. But this is not enough.

I was pleased to hear Congressman McKinney make reference this morning to our 1970 petition drive. Actually, he understated the results, because we came up with 1¼ million signatures in a very brief period, which indicates that the people of the United States understand the issue and do, indeed, support it.

I would like to have the full text of this statement in the record, but I think I would like to concentrate my oral remarks on some of the reasons, perhaps why our goal has not been achieved.

Mr. EDWARDS. Without objection the full statement will be made a part of the record.

Mrs. CLUSEN. While I think the justness and rightness is obvious, I do want to speak to some of the concerns expressed by those who do not support giving residents their just voting representation. For instance, there are those who have expressed concern that an amendment like the one which is proposed here would affect the special status of that area in which the Federal District is located, a status conferred by the Constitution.

This amendment would not end the responsibility that Congress now has over that geographic area, but it would give District of Columbia citizens the right to have meaningful representation. The independence of the national capital area from other governmental jurisdictions would continue as it is at present. I might add that nowhere in the constitutional provisions surrounding the District does it say that residents should be denied the political rights that other Americans enjoy, but as long as the current situation continues unchanged, District of Columbia citizens really have only a fraction of their rights.

Another concern I have heard expressed is that representation in the U.S. Senate for the District would deprive the States of equal suffrage. We do not see this as a legitimate concern; even adding two Senators for the District of Columbia would not dilute the representation for the States. Each State would still be equal to every other State. In fact, we see this as similar to the situation when new States are added to the list.

Moreover, voter representation in the Senate is especially important since that body has different functions than those of the House. With representation only in the House, District of Columbia residents would still have no say in the ratification of treaties, the approval of candidates for Cabinet, and other appointed positions, nor in the appointment of Federal judges.

So, we hope that the 95th Congress will take this historic and long-needed step. And we certainly are pleased to hear of the support announced today by the White House. To achieve this will rightly earn all of you the credit for redress of an injustice that has been allowed to exist for too long.

I pledge the support of the local, State, and national leagues across the country in securing ratification of this amendment if you do, indeed, pass it.

Thank you.

[The prepared statement of Ruth C. Clusen follows:]

STATEMENT BY RUTH C. CLUSEN, PRESIDENT, THE LEAGUE OF WOMEN VOTERS OF THE UNITED STATES

I am Ruth Clusen, President of the League of Women Voters of the United States, a volnnteer citizen and education and political organization of 1,350 Leagues with approximately 137,000 members in 50 states, the District of Columhia, Puerto Rico and the Virgin Islands.

It has always been a matter of great concern to the League of Women Voters that a hasic right, representation in Congress for citizens, has not yet heen granted to the residents of the nation's capital. I am here today to renew our firm support for representation for the District of Columbia which would he granted by H.J. Res. 554.

The League, born in 1920 out of the struggle for the enfranchisement of women, began early in its history to seek redress for another disenfranchisement group—the residents of the District of Columbia. Direct representation in Congress and in the electoral college for the citizens of the District of Columbia became a part of the League program in 1924 and over the years our members have worked unceasingly for the goals of full representation and home rule. Leagues across the country actively supported the ratification in 1961 of the 23rd Amendment to the Constitution, which gave D.C. citizens the right to vote for President and Vice President and gave D.C. three electoral votes.

In 1970, League members launched a nationwide campaign, including a petition drive in which over a mlllion and a quarter signatures were collected in a hrief period, in support of full voting representation in Congress for D.C. citizens. As an interim measure, we also supported the nonvoting delegate hill.

Again in 1975 the League testified before this committee in support of a constitutional amendment to give D.C. citizens full representation in our national legislative body.

It is ironic, that, while our nation has just observed its Bicentennial, the hasic right fought for hy the original 13 colonies—the right to he represented in their government—has still not been accorded citizens of the District. As you know the Declaration of Independence states: "governments are instituted among men, deriving their just powers from the consent of the governed." However, District residents are still being governed without tbeir consent as expressed in the opportunity to vote for their representatives in Congress who have full voting powers with other members of Congress.

The District of Columhia has a population greater than that of seven states [1] which, ohviously, are given voting representation in Congress. These states are (according to 1975 Census population figures) Alaska, Delaware. Nevada, North Dakota, South Dakota, Vermont and Wyoming. Yet D.C. has no voting representatives in the body that has a veto power over their local government's decisions and that holds the purse-string control, thus denying the 716,000 citizens [2] of the District the rights of self-government that other American citizens consider their due under the Constitution.

Residents of the District of Columbia are taxed without being represented. According to 1974 Census figures,[3] while the national per capita average income-tax was $587, for D.C. residents, the per capita income tax was $664, reflecting the fact that the per capita income for D.C. is higher than the national average. Thus, D.C. citizens pay more than their fair share of taxes. They onght to have their fair share of voting representation in hoth houses of Congress.

While I think the justness and rightness of this measure is obvious to all. I want to speak to some of the concerns expressed by those who do not support giving the residents of D.C. their just voting representation in the national legislature.

There are those who have expressed concern that an amendment like the one proposed here would affect the speclal status of that area in which the federal district is located, a status conferred by the Constitution. This amendment would not end the responsibility that Congress now has over this geographic area, but it would give D.C. citizens the right to have meaningful representation in Congress. The independence of the national capltal area from other governmental jurisdictions would continue as at present. I might add that nowhere in the constitutional provisions surrounding the District does it say that residents should be denied

[1] U.S. Dept. of Commerce, Bur. of the Census, Statistical *Abstract of the U.S. 1976*.
[2] Ibid.
[3] Ibid.

the political rights that other Americans enjoy. But as long as the current situation continues unchanged, D.C. citizens have only a fraction of their rights.

Another concern I have heard expressed is that representation in the U.S. Senate for the District would deprive the states of equal suffrage. We do not believe this to be a legitimate concern. Even adding two Senators for D.C. would not dilute the representation for the states—each state will still be equal to every other state. Moreover, voting representation in the Senate is very important since that body has different functions than those of the House. With representation only in the House, D.C. residents would still have no say in the ratification of treaties, approval of candidates for Cabinet and other appointive positions, nor in the appointment of federal judges.

We hope that the 95th Congress will take the historic and long-needed step of approving the resolutions calling for voting representation for D.C. in both the House and Senate. To do so will rightly earn you the credit for redress of an injustice that has been allowed to exist for too long.

I pledge the support of local and state Leagues across the nation in securing ratification of this amendment should the 95th Congress pass H.J. Res. 554.

Thank you.

Mr. EDWARDS. Thank you, Mrs. Clusen.

We will now hear the testimony of Mr. Clarence Arata.

Mr. ARATA. Mr Chairman, Mr Drinan, I'm Clarence Arata, the executive vice president of the Metropolitan Washington Board of Trade. Our organization is very appreciative of the opportunity afforded us to appear and express our unqualified and enthusiastic support for this legislation. It is a compelling privilege and distinct honor to support the considerable efforts of our distinguished Delegate. Mr. Fauntroy, also our distinguished chairman here, Mr. Tucker, and all of the others who are in support of this legislation.

The great news that we had from the President, Mr. Chairman, led me to the conclusion that maybe we all ought to go home and just rest on that statement by the President, but I think we'd better go ahead anyway.

The Board of Trade has within its membership more than 1,400 District of Columbia retailers, business men, and community leaders. We have, over the past few years, studied the controversial issue of full voting representation in the District of Columbia and after due deliberation, concluded that the idea is fair, democratic, essential, and fully consistent with the U.S. Constitution.

We have presented our findings to other Congresses. Unfortunately, those Congresses have, for various reasons, failed to take action on this matter, despite its obvious merit. We, nevertheless, appeal to you to seize this opportunity to provide the citizens of the District of Columbia with the same privileges that citizens of many of your own districts have enjoyed for more than 175 years. Congresses have on many occasions, in the face of better or more mature wisdom, taken the initiative to act on matters that other Congresses have passed over. It is understandable and, indeed, commendable that several Congressmen—even at least one within this committee—have been persuaded to the merits of full voting representation. We hope there are a number of others who will act similarly.

And we think there will be. The simple fact is, Mr. Chairman, that there is not one substantive reason why this legislation should not pass. All of the relevant arguments, to be sure, are to the contrary.

The 86th Congress recognized the right of the people of this city to vote in the Presidential election by submitting for ratification the 23d

amendment. The 91st Congress recognized the necessity of providing at least a voice in the House of Representatives by creating the Office of Delegate. Should not this House, in this 95th Congress, complete this work and meet your responsibility to assure full voting participation in our national life for this capital city?

We rest our case on the simple principle upon which this great Nation was founded. The phrase, "no taxation without representation," is just as applicable to this matter as it was to our forefathers who fought and often died to see that it became a reality. We cannot imagine that they had the slightest intention of making that principle of law applicable to most rather than all of our Nation's citizens.

There is nothing to indicate that the framers of the Constitution intended to preclude full voting representation for the District. Reading the document carefully, it is evident that the only concern of the framers was to afford Congress exclusive jurisdiction over the Federal area which, at that time, consumed most of the District. It is a matter of historical oversight that our Founding Fathers failed to foresee the rapid expansion and more local identity of the District of Columbia in terms of democracy, economy, and governmental services. The District has become a major residential population center.

The District of Columbia now has a resident population larger than that of the States of Alaska, Delaware, Montana, Nevada, North Dakota, South Dakota, Vermont, and Wyoming. The District is treated like a State for purposes of national legislation based upon congressional power to regulate interstate commerce; District residents pay a per capita Federal income tax greater than the overwhelming majority of citizens in other States, and the District, as a whole, pays more Federal taxes than the citizens of 15 other States. All of these responsibilities—in addition to the sometimes supreme task of defending America on the battlefield: the District of Columbia, incidentally, had the fourth highest number of casualties per resident in the Vietnam conflict—are borne by the citizens of the District without the same democratic privileges that other citizens enjoy. One nonvoting Delegate in the House—despite his outstanding qualities—is hardly an adequate or fair share to represent responsibilities of this magnitude.

There are, then, many good reasons why the District of Columbia should have full voting representation in the House and the Senate. In a period which has seen this Nation celebrate 200 years of freedom premised on representational government and a now renewed and aggressive policy in support of human rights and human dignity, it is unthinkable that the people who live in the Nation's capital should be without these fundamental rights. As former Representative Gilbert Gude has said, "It is right, it is fair, and it is an essential element of representative democracy." It is for these reasons that the Metropolitan Washington Board of Trade supports this legislation.

We hope you do, too.

Thank you, Mr. Chairman, and Mr. Drinan.

Mr. EDWARDS. Thank you very much, Mr. Arata, and we thank all three members of the panel for their splendid testimony. I always think I have heard every argument which can be raised in support of full voting representation for the District, and then almost every wit-

ness has something new to add. For example, I did not know the District of Columbia had the fourth highest number of casualties per resident in the Vietnam conflict. Yet we don't allow the survivors or their parents or relatives to be represented in Congress. When you think about it, it is really outrageous. In fact, the more you think about this subject, the more resentment one can feel, because not having voting representation in both Houses really makes you less than a citizen. That is unacceptable.

I hope that resentment is understood in the Congress. We have a big battle ahead of us.

Thank you.

And now I will yield to the gentleman from Massachusetts.

Mr. DRINAN. Thank you, Mr. Chairman.

I echo the chairman's words. I'd like to get mad about this all over again, and then I begin to wonder, "Well, who are the enemies?" We have all types of friends here supporting representation.

I'm glad to see the League of Women Voters back. Mrs. Clusen, I agree with you that I hope this is the last time on this subject. But the League, as everyone knows, started years and years ago on this topic, and here we have Democrats, Republicans, liberals, and conservatives. But I keep wondering: who are the people who still vote no?

Well, I hope that the support of President Carter and Vice President Mondale will turn things around.

One of my minor frustrations, Mr. Chairman, is that I can't find any questions to ask because I agree with everybody. So, I'll yield to counsel. Maybe I'll think of something to say.

Mr. EDWARDS. Thank you, Mr. Drinan.

We have the gentleman from California, Mr. Beilenson.

Mr. Beilenson?

Mr. BEILENSON. No questions.

Mr. EDWARDS. Mr. Starek?

Mr. STAREK. Thank you, Mr. Chairman, I have a couple of questions.

Mr. Tucker, may I ask you if you have any idea about the number of eligible voters in the District of Columbia who are domiciled and vote in another jurisdiction? In other words, how many people voted in the last election in the District of Columbia?

Mr. TUCKER. In the Presidential election, there were—I'm not exactly sure of the figure—around 150,000 or 160,000. I don't know—I don't have the answer to the other part of the question; there must be that many voters who are here who maintain their voting residence elsewhere because they don't have full representation here.

A VOICE FROM THE AUDIENCE. Do you have any idea how many eligible voters there are—people who are eligible to vote out of a population of 720,000?

Mr. TUCKER. I don't know the figure on that. It would probably be a fourth of the population—more or less.

Mr. STAREK. So that would mean there would be a substantial number who either do not choose to vote and are, in fact, registered elsewhere because they cannot vote. Would that be——

Mr. TUCKER. We're satisfied there are a large number who vote elsewhere, or who at least retain the right to vote elsewhere, much

larger than it ought to be, and that, further—I might say, counsel—has a negative effect on their relationship, often, to the District—many of them—because they still identify elsewhere though residing here. Many of them, for many years, don't fully feel involved or become involved in District affairs because of that identification that they retain elsewhere.

And I think, with this full voting representation, that part of that loyalty, where it is not fully here, would be transferred here, and that would reflect itself in their involvement in local affairs.

Mr. STAREK. I imagine, for instance, that that would cut down on the number of people who are participating in city elections.

Mr. TUCKER. That is correct. It certainly does affect that number. It cuts down.

Mr. STAREK. One more question if I may, Mr. Chairman.

Mr. Arata, I would like to ask you: On page 3 of your statement you note that residents or citizens of the District of Columbia "pay more Federal taxes than the citizens of 15 other States."

Mr. ARATA. That's right.

Mr. STAREK. I assume—I don't know, but I assume—that included in that number of 15 would be the 8 you cite that are smaller than the District in population. Is that true?

Mr. ARATA. That would be a good assumption; yes. I don't know the actual States by name—the 15—but I would assume that's so.

Mr. STAREK. I wonder, do you have a cite to that statistic?

Mr. ARATA. I can supply you with that; yes, sir.

Mr. STAREK. If you would supply it for the record. It is an interesting statistic.

Mr. EDWARDS. It will be accepted for the record without objection.

[Subsequent to the hearing, the following information was supplied for the record:]

THE METROPOLITAN WASHINGTON BOARD OF TRADE,
Washington, D.C., September 27, 1977.

Hon. DON EDWARDS,
Chairman, Subcommittee on Civil and Constitutional Rights, Committee on the Judiciary, House of Representatives, Washington, D.C.

MY DEAR MR. CHAIRMAN: I wish to take this opportunity to express my thanks to you for permitting me to testify before your Committee last week on the matter of voting representation in the Congress of the United States. We feel very strongly about this matter and hope that you and your colleagues are successful in getting the necessary votes to have it passed from the House over to the Senate.

During the hearings Counsel for the Committee asked that we supply information on a specific point in my testimony in which I said that the citizens of the District of Columbia pay more Federal taxes than the citizens of 15 other states. Counsel asked what those states were and they are, in descending order, as follows:

District of Columbia	$386,000	Nevada	$269,000
Hawaii	379,000	Montana	213,000
Rhode Island	373,000	Idaho	197,000
Utah	307,000	South Dakota	156,000
New Hampshire	303,000	Alaska	150,000
Delaware	299,000	Vermont	149,000
New Mexico	296,000	North Dakota	149,000
Maine	292,000	Wyoming	124,000

Another interesting fact is that there are only 6 states which pay a higher Federal individual income tax per capita than the residents of the District of

Columbia. These are: Connecticut, Florida, Nevada, Delaware, New Jersey, and Illinois.

I trust that this information is helpful to you in your deliberations.

Sincerely,

CLARENCE A. ARATA.

Mr. STAREK. I would like to ask just one other question on that: If that is the case, how is the Federal payment affected by this statistic. Is it included, or excluded, or are you looking at the amount of taxes paid by the citizens?

Mr. ARATA. Paid by the citizens.

Excuse me; there is no relationship that I can find—I'm sure Sterling would agree with me—there's no relationship between the Federal payment and the amount of taxes paid by the District residents in the Federal Treasury. We sometimes wish there would be.

Mr. STAREK. Sorry?

Mr. ARATA. We sometimes wish there would be.

Mr. STAREK. OK, thank you.

Well, maybe this panel is the appropriate panel to ask: I would like to ask all of you your observation on statehood for the District of Columbia. I assume you all oppose, but I would like to know why.

Mr. TUCKER. Would you like to speak first, Mrs. Clusen?

Mrs. CLUSEN. I think we have always seen the situation in the District of Columbia as somewhat special since it is the seat of the Federal Government. Statehood has never really seemed a viable option, and I think we have also said that residents of the District were not enthusiastic about the possibility and would much prefer to leave things the way they are, seeking only special representation. But I really can't speak for them. Mr. Tucker is closer to them than I am.

Mr. TUCKER. Speaking for myself and for the Coalition of Self-Determination, our position at the moment is that we would like to see enacted into law that which is before us, the amendment. We do have under study the question of statehood, because it continues to come up. And while our position now, as I've indicated, is that we believe that all of the questions on the many complex issues outstanding on that whole question, which cannot quickly or easily be resolved, and we are trying to get those questions and issues sorted out and the answers to as many of them as possible so that as we pursue in the future the possibility of statehood, we and all of us who will be debating these matters will have as much facts and data before us as possible and proposed solutions.

And our feeling now is that a discussion of statehood merely confuses, pretty much, the possibility that is available to us, which we all understand and the ramifications of which are familiar to us. But statehood is not an issue that is totally out of the question for sometime in the future, and we are pursuing our research and analysis of that question now.

Mr. STAREK. Thank you.

Mr. ARATA. I would just like to add to that that we on the Board of Trade, the business community, are very conscious of the Federal presence here. We are very conscious of the initial design and concept of the District of Columbia, that of being under the Federal authority to some degree. But we are, despite that, totally and wholeheartedly in support of this legislation which we are testifying on today,

and we would prefer at this moment—as Sterling said—to lay the statehood matter aside.

Mr. STAREK. Thank you very much.

And thank you, Mr. Chairman.

Mr. EDWARDS. Thank you very much, members of the panel. We appreciate your contribution.

There is a vote in the House of Representatives; the subcommittee will recess for 10 minutes.

[Recess.]

Mr. EDWARDS. The subcommittee will come to order.

Our second panel of witnesses is, indeed, representative of the myriad effective spokespersons here in the District of Columbia: Melvin M. Burton, an attorney in the District, appears as vice chairman of the District of Columbia Republican Central Committee; Robert E. Petersen, as president of the Greater Washington Central Labor Council, AFL–CIO, represents over 200,000 union members and their families in the Greater Washington metropolitan area; and John D. Isaacs appears both as president of the Greater Washington Chapter of Americans for Democratic Action and as a member of the National Board of ADA.

I recognize the gentleman from California for a resolution.

Mr. BEILENSON. Mr. Chairman, I move that the Subcommittee on Civil and Constitutional Rights of the House Committee on the Judiciary permit coverage of this hearing, in whole or in part, by television broadcast, radio broadcast and still photography, or by any of such methods of coverage pursuant to committee rule V.

Mr. EDWARDS. The resolution submitted by the gentleman from California has been approved without objection.

Mr. Burton.

Mr. BURTON. Yes.

Mr. EDWARDS. Nice to have you here and you may proceed.

TESTIMONY OF MELVIN M. BURTON, JR., VICE CHAIRMAN, D.C. REPUBLICAN CENTRAL COMMITTEE, ACCOMPANIED BY ROBERT E. PETERSEN, PRESIDENT, GREATER WASHINGTON CENTRAL LABOR COUNCIL, AFL–CIO; AND JOHN D. ISAACS, PRESIDENT, GREATER WASHINGTON CHAPTER OF AMERICANS FOR DEMOCRATIC ACTION

Mr. BURTON. Thank you, and good morning, Mr. Chairman.

Mr. Chairman, I would like to first congratulate you and the other members of the subcommittee for your efforts, again directed toward voting representation for the residents of the District of Columbia.

I have a short statement here which I would like to read into the record. And before I commence, with regard to a statement, a question that was asked by counsel concerning the number of eligible voters in the District of Columbia, I am advised that the Board of Elections estimates that there are approximately 400,000 eligible voters in the District of Columbia; and, of course, in addition there are less than 50,000 residents, approximately, who retain voting rights elsewhere. I just want to throw those figures out to you.

Mr. Chairman, members of the subcommittee, I am appearing here today on behalf of the District of Columbia Republican Central Committee on which committee—as you have stated—I serve as vice chairman. I am honored to be able to convey to you the expressions of the District of Columbia Republican Central Committee on a matter which is of great concern to the approximate 700,000 plus citizens of the District of Columbia—incidentally, which population according to the 1970 census exceeds the population of at least 10 of the least populous States. And, of course, one-half of these 10 States—it should be noted, Mr. Chairman—do not have a population that exceeds even three-quarters that of the District of Columbia, yet each of these States has representation in the House and Senate, while the District of Columbia is left with its vocal but voteless delegate to voice the divergent and conflicting interest of its 700,000 plus citizens. Now, this is a very futile task, as you can envision.

Mr. Chairman, House Joint Resolutions 139 and 554 should be viewed as a portion of the human rights efforts to extend to the citizens of the District of Columbia voting rights now exercised by citizens of other major capitals of the world.

And, of course, I would like to add, with the announcement of this morning, that the present administration has seen fit to endorse this effort. I would like to congratulate the administration for lending its voice to the voice of past administrations in this effort.

If the democratic process has any meaning, Mr. Chairman, it has to be viewed in the manner in which it is applied at the situs of its creators. Unless human rights are implemented in the District of Columbia by granting the residents thereof full voting representation, the democratic process in the United States will continue to be dimly viewed by the remainder of the world's people.

It has been said that if the framers of the Constitution intended the residents of the District of Columbia to have voting representation in the Congress, they would have so stated, and since they did not, it axiomatically follows that they did not intend to extend these rights and privileges to the local residents.

However, when we look at the reasons for establishing the District of Columbia as the seat of the Federal Government, we find no expression that the newly created government would operate more effectively and efficiently if the citizens of the proposed District were disenfranchised.

Mr. Chairman, it has been said that a pound of history is worth more than a ton of logic. An examination of the historical documents setting forth the reasons for the founding of this District, over which Congress would have exclusive jurisdiction, shows us that the Founders assumed that representation in Congress of the residents of the area ceded would be afforded protection by those States ceding territory for that purpose.

It appears that history supports the argument that the Founders of the District inadvertently, and not purposely, disenfranchised the residents of the District of Columbia. This Congress, Mr. Chairman, has the opportunity to cure that inadvertence by acting timely and favorably on House Joint Resolution 554. And, of course, the District of Columbia Republican Party favors a constitutional amendment providing for voter representation to the District of Columbia.

While statehood for the District may be another mechanism for achieving full voter representation for the citizens of the District of Columbia, the constitutional route for achieving full voter representation is the more preferable route, and would do less violence to the interaction between the District and the Federal Government and would be consistent with maintaining the exclusive jurisdiction mandated by article 1 of the Constitution.

And, I might add that I think that while throughout the United States there are numbers of people who are in favor of granting voter representation to the residents of the District of Columbia, I think that the moment you talk about granting the District of Columbia statehood, a number of them, of course, would withdraw their consent, and I think they would be very much upset about it.

In addition, if the District of Columbia is created as a State, it means, then, you would be in conflict with what the framers of the Constitution had in mind, and that is setting up an area over which the Congress would have exclusive control wherein there would be no competing sovereign, and, of course, to create a State of the District of Columbia would create a different sovereign. Such an act may well be unconstitutional.

Mr. Chairman, House Joint Resolution 139 makes no provision for the District of Columbia to participate in the constitutional ratification process, which we feel is desirable. Therefore, we urge the adoption of section 1 of House Joint Resolution 554, which does permit the District to participate in this process. This section, when interpreted in the light of the equal suffrage provision of article V, does not grant to the District more or less representation than any other State, but, like all of the other States, of course, it grants to the District of Columbia at least two Senators and as many Representatives as the population will bear, no more and no less. This is in keeping with the equal suffrage clause.

Section 2 of House Joint Resolution 139 relates to the filling of vacancies; 139 leaves questionable the manner in which those vacancies are to be filled. We feel that 554 does it properly when it leaves the filling of vacancies to the residents of the District of Columbia.

In addition, section 3 of House Joint Resolution 139, would have no effect upon the 23d amendment relating to the electors for the District of Columbia in Presidential and Vice Presidential elections. The present number of three electors—as you well know—came about as a compromise, but I urge upon this group that the compromise created an inequitable result. And I think that in order to do away with the inequitable results, then, we need to repeal the 23d amendment.

Mr. Chairman, the District of Columbia Republican Central Committee is asking on behalf of the 700,000-plus citizens of the District of Columbia to be given the opportunity that has been denied them for 200 years, that is to allow them to express their political views and tabulate their votes along with the tally of the representatives of the 50 States.

We urge, Mr. Chairman, the adoption of House Joint Resolution 554.

Mr. EDWARDS. Thank you, Mr. Burton.

The subcommittee will recess for 10 minutes; there is a vote in the House of Representatives.

[Recess.]

Mr. EDWARDS. The subcommittee will come to order.

Mr. Petersen is president of the Greater Washington Central Labor Council, AFL–CIO.

We are glad to have you here, and you may proceed.

Mr. PETERSEN. Thank you, Mr. Chairman.

My name is Robert E. Petersen, president of the Greater Washington Central Labor Council, AFL–CIO. In that capacity I represent over 200,000 union members and their families in the Greater Washington metropolitan area. Our membership, like all citizens of the District of Columbia, wish to be represented in the Congress, equal to every other American. I wholeheartedly endorse House Joint Resolution No. 565, introduced by the Honorable Walter Fauntroy, which will achieve this goal.

When the Founding Fathers first conceived a special Federal district, they wanted to insure the protection of the deliberations of the Congress. The Continental Congress of 1783 had suffered a great humiliation when 80 mutinous soldiers pointed their muskets toward the windows of Congress and yelled offensive words. The city of Philadelphia refused to protect the Congress, and thus they decided to adjourn and move temporarily to Trenton, N.J.

From this incident Members of Congress wanted to insure autonomy from local control. In the process, they removed suffrage from, at that time, a yet to be determined location and population. Many historians have called the disfranchisement of District's residents an oversight of a heavily burdened Constitutional Congress.

During this time the Founding Fathers had a vast array of other responsibilities, and could not take into account an unidentifiable group of citizens. The rapid population growth of the District was also unforeseen by the Founding Fathers. The records of the Constitutional Convention and subsequent congressional debates indicate that the District was created for the relatively narrow purpose of preserving national public authority and jurisdiction at the seat of the Federal Government.

Article I, section 8, of the U.S. Constitution provides that the District of Columbia will be the exclusive legislative jurisdiction of the Congress. Nowhere does the Constitution provide for the denial of congressional representation for residents of the District of Columbia. Article V states that "no State without its consent shall be deprived of its equal suffrage in the Senate."

To extend voting representation in the Congress to the citizens of the District of Columbia would not reduce the power of other States any more than when the Original Thirteen Colonies admitted Vermont as the 14th State. It is time to extend the fundamental right of representation to the 700,000 American citizens of the District of Columbia.

James Madison wrote, in the Federalist Paper No. 43, that the District would receive adequate representation by Senators and Congressmen residing in it. This, of course, is not true. These representatives are responsible to their constituents, not to the citizens of the District of Columbia.

Presently, 10 States, with a total of 34 representatives in the House and Senate, have a smaller population than the District. For these citizens there is one member for every 165,000 people. The citizens of the District of Columbia, who number over 700,000 people, have one nonvoting Delegate. I do not believe the best interests of democracy are being served by this fundamental weakness in our system. There is no rational reason to exclude the District from the rest of the Union.

Members of Congress should remember the cries of early American Revolutionaries when they exclaimed that taxation without representation is tyranny. Citizens of the District are subjected to all Federal taxes. District residents paid $664 per capita in Federal taxes in 1976, $77 above the national average.

Citizens residing in Puerto Rico and territorial areas of the Virgin Islands, Guam, and American Samoa are not directly subject to Federal taxation, but are the beneficiary of many Federal programs. District residents receive less revenues and services from the Federal Government than they contribute to the Federal Treasury. This injustice goes on while the District's residents are not represented in the Congress. One can still clearly exclaim that taxation without representation is tyranny.

The District of Columbia needs to be fully represented in the Congress so that our country can renew attention on the crisis of our urban areas. Metropolitan areas are not getting their fair share, and this is due in part to the lack of representation for District residents.

Both the Democratic and Republican Party platforms have called for full voting rights in the Senate and House for citizens of the District of Columbia. The Carter administration as well has called for full voting rights—and we were pleased with the statement this morning.

I believe, along with both major political parties and the President, that the American citizens living in the District of Columbia have an inherent right to be represented. This is a fundamental right in modern America.

The right of District representation in the Congress can be seen as a logical extension of suffrage in history, first, from landowning white males to nonlandowning white males, then to the freed black man, and then women, and recently, 18-year-olds. The time certainly has come for the Congress to enact legislation to allow the common, decent citizens of the District of Columbia to also be represented.

The proposed resolution, House Joint Resolution 565, would not make the District the 51st State, but it would recognize the unique status of the District of Columbia while, at the same time, provide for the rights of American citizens. I call upon this committee and the Congress to correct an early mistake of our Founding Fathers and end the tyranny of taxation without full representation.

Mr. EDWARDS. Thank you very much, Mr. Petersen.

We will hear from Mr. Isaacs right after a short recess for a vote.

[Recess.]

Mr. EDWARDS. The subcommittee will come to order.

We now will hear from Mr. John D. Isaacs, who is president of the Greater Washington Chapter of the Americans for Democratic Action, and, with me, a member of the National Board of ADA.

Mr. Isaacs, welcome; and you may proceed.

Mr. ISAACS. Thank you very much, Mr. Chairman. Thank you for having me and also for returning to the floor after all of these votes.

On behalf of ADA I would like to start out by congratulating the Carter administration for the strong statement this morning. I think we need to urge that the Carter administration put its muscle as well as its voice behind full voting representation for the District of Columbia.

I think it's significant that on this panel we have a representative of a liberal political organization composed primarily of Democrats as well as a representative of the Republicans. This is one issue in the District that unites almost all of us; we're all in favor of full voting rights in the District of Columbia.

I have been a resident here for about 6 years, and have lived in this metropolitan area for about 17. In the past, I used to be able to vote for Members of Congress. Once I moved to the District, however, I was, effectively, disenfranchised.

I want to highlight—in summarizing my testimony—the significance of the issue for the District by looking at a couple of key votes that have taken place in the House since the August congressional recess.

The first vote came on September 8, the cliffhanging 202 to 199 vote which finally terminated the B–1 program. Then a week later on September 15, there was an even closer vote on the subminimum wage, when Speaker O'Neill broke the tie, made it 211 to 210, and defeated the subminimum wage. On both of these votes, decided by extremely narrow margins, Members of Congress from 10 States smaller than the District—and those 10 States are on this chart over here—had a chance to vote on these issues. Thus, citizens in those 10 States—Alaska, Delaware, Idaho, and so on, up to Wyoming—had an opportunity to influence national policy in a closely divided House. They could lobby their Representatives, they could call, they could write letters; and business leaders, labor union leaders and others took advantage of this, which is in the true spirit of the Republic. But residents of the District did not have that same opportunity. We could contact our Delegate to Congress—and labor unions, businesses did, some of whom, of course, had a direct stake in these issues. However we contacted our Delegate, he couldn't do much without the vote. So, the residents of the District were really robbed of a voice on the issues that closely divided the House.

In the chairman's city of San Jose, all three Representatives, I noted, supported the termination of the B–1 program, and two of the three opposed the subminimum wage. Citizens of Los Angeles, Roanoke, Lake Bluff, Akron, Newton, and Hannibal also had a voice in these crucial issues. I'm sure you heard your constituents, particularly on minimum wage.

Another vote——

Mr. EDWARDS. Please proceed.

Mr. ISAACS. We, the citizens of the District of Columbia, do not have a voice. Our delegate to Congress could not vote his constituents' wishes.

In short, the lack of voter representation in the Congress for the District means the inhabitants of the Nation's Capital are excluded from one of their most fundamental rights as American citizens—the

right to vote. We pay taxes, we serve in wars, serve on juries, but we can't vote for a voting Member of Congress. We can't vote for two Senators. It is little wonder that so many people have neglected to register, or register in other States; despite that, I might add, there is still high voter registration and voter turnout—at least compared to the other States in the country.

What holds true in the House holds just as true for the Senate. The Panama Canal is one of the major issues facing it, and the treaty will come to a vote next year. The Bert Lance hearings have been a subject of major concern. There will be a press conference on that this afternoon. However either of these issues turns out, we'll know one thing for certain, and that is residents of the District of Columbia will have neither voice nor vote on those two subjects.

We have made some progress in the last few years. We've been given the vote for President finally, we have a nonvoting Delegate in the House; we have limited home rule. But we still have a long way to go in this capital of world democracy.

I believe that if the citizens of San Jose, of Roanoke, of Akron, of Lake Bluff, of Newton, of Hannibal, and of Los Angeles, all have a stake in what happens in Congress, that just as much the citizens of the District of Columbia have a stake in what happens here. The difference is your constituents can make their voice heard in a kind of manner that has impact on the congressional process. Also, residents of 10 States smaller than the District can have that impact on the Panama Canal Treaty, on the minimum wage, even on the issues directly affecting the Federal city. Americans for Democratic Action feel that the District of Columbia should be given a similar opportunity and a similar right.

Thank you very much, Mr. Chairman.

Mr. EDWARDS. Thank you, Mr. Isaacs.

A typical meting happened this morning, one which happens every Wednesday; the entire Democratic delegation of the State of California met for breakfast to discuss California problems. I'm sure the Republican delegation does the same thing at least once a week. Unfortunately, there can't be a District of Columbia delegation meeting. The fact is, you can talk all you want to but Mr. Fauntroy cannot vote.

While listening to this testimony another thing came to mind, when we get letters from out of State or out of our congressional district, we don't read them. We do not have time. Unless it is a personal letter that has some particular charm to it, we just stamp it "referral" and it is forwarded to the Member representing that district.

It is thus, a disadvantageous situation to be a resident of Washington, D.C. It is a shocking deprivation to have a disinterested group of people on each side of the Capitol dome representing you with one hand tied behind their back, not reading the mail you write them, not listening to you when you speak to them.

I think the excellent testimony of the witnesses today has made that very clear.

I am sorry to say that we are going to have to take another recess for—I believe this will be the last one—10 minutes, and then we will have some questions.

[Recess.]

Mr. EDWARDS. The subcommittee will come to order.

Ms. Davis?

Ms. DAVIS. I have a question which I address to Mr. Isaacs and to Mr. Petersen, since I believe Mr. Burton answered it in his testimony.

Five resolutions are being considered by this subcommittee. Three of those resolutions would leave the 23d amendment in effect; the other two would repeal it. Discuss your views as to whether the 23d amendment should be repealed.

Mr. PETERSEN. Well, the position of the Labor Council is that it should be, because we support Mr. Fauntroy's resolution, which calls for the repeal of the 23d amendment.

Mr. EDWARDS. Would you explain for everybody what the 23d amendment does?

Ms. DAVIS. The 23d amendment allows the District representation in the electoral college for purposes of election for the Office of President and Vice President, but limits the number of electors to the least populous State.

Mr. ISAACS. I think the Americans for Democratic Action would be in agreement with that position. The 23d amendment locks us in at this point to three electoral votes, which may or may not be the right number that we should have after the 1980 census. We feel that the District of Columbia should be treated as any other State on this matter. If we are entitled to four electoral votes, we should get four.

Ms. DAVIS. Thank you.

Mr. BURTON. Well, the question was not addressed to me, but I will respond. I think the position that I take, as well as the position that my colleagues have taken, is the proper position. As I indicated in my testimony, the Congress, of course, made an attempt to compromise with the District of Columbia; but you see, here again we are talking about doing things for the District of Columbia in an inequitable manner in comparison with the manner in which other residents of other States are treated with regard to almost every action that the Congress has taken over the past years—I don't know how many years the District of Columbia has been the last on the totem pole.

It seems to me that in order to make the residents of the District of Columbia feel that they are citizens the same as citizens of other States, then we ought to do away with the inequities.

Mr. EDWARDS. Thank you, Mr. Burton.

Ms. DAVIS. Thank you, Mr. Chairman.

Mr. EDWARDS. Mr. Starek?

Mr. STAREK. Yes, I have a question, too.

Mr. Burton, I notice—I'm pleased to see, I think this is the first testimony we've had which comments specifically on House Joint Resolution 554. I am curious about your interpretation of section 2 of that resolution. How you would envision vacancies, should they occur in the Senate, being filled by the residents of the District of Columbia?

I'm sure you are familiar with the fact that the Constitution provides for Governors to appoint until an election is held.

Mr. BURTON. Frankly, I view 554 as being consistent with what the framers of the Constitution intended, and that is the framers intended that the vacancy should be filled by an election held throughout the State or District from which a Senator or Representative represents.

This question arose also with regard to Senate Resolution 76 on which there were some hearings in 1973, and the big question there was who would have the right to fill those vacancies; would it be the Senate, would it be the whole Congress, or would it be, say—1973, of course, was a little bit before the advent of home rule—the appointed council, that was appointed by the President.

I took the position then, and the party took the position, that there should be left to the residents of the District of Columbia by way of a special election. I don't see, frankly, how Congress, without, again interjecting itself into the affairs of the District of Columbia, and even if they had the right to do so under the Constitution, could say to the residents of the District of Columbia, "We give to you the right to elect two Senators and Representatives," and then say, when there is a vacancy, "We have a right to fill that vacancy."

I think the citizens of the District of Columbia ought to have that right, and I think that this proposal does that.

Mr. STAREK. You do think that the language in section 2 does meet that goal?

Mr. BURTON. I think that it does.

Mr. STAREK. All right, thank you very much.

Mr. EDWARDS. Any further questions?

Mr. STAREK. No.

Ms. DAVIS. No.

Mr. EDWARDS. Thank you very much, and for your patience, and thank you for splendid testimony.

The meeting is adjourned.

[Whereupon, at 11:45 a.m., the hearing was adjourned.]

REPRESENTATION FOR THE DISTRICT OF COLUMBIA

TUESDAY, OCTOBER 4, 1977

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 2:15 p.m., in room 2237, Rayburn House Office Building, the Honorable Don Edwards (chairman of the subcommittee) presiding.

Present: Representatives Edwards, Volkmer, and Butler.

Also present: Thomas P. Breen, counsel; Ivy L. Davis, assistant counsel; Roscoe B. Starek III, associate counsel.

Mr. EDWARDS. Call the subcommittee to order. Other members will be here in a few minutes. I suspect, following this vote there will be a vote on the rules, the previous question. We should then be able to continue without interruption. I apologize for keeping you waiting, but that's the way things are around here. The subcommittee will come to order.

This afternoon we continue hearings on the various joint resolutions introduced this session which would provide congressional representation to the residents of the District of Columbia.

Today, and again on Thursday, October 6, we will hear testimony from constitutional experts who have analyzed these resolutions and who will discuss with us their conclusions. Each will summarize his written statement and then, as a panel, take questions from subcommittee members and counsel.

Before I introduce our distinguished panel of constitutional experts, I would like to welcome Robert Washington, chairman of the District of Columbia Democratic State Committee. Accompanying Mr. Washington is our good friend, John Hechinger, Democratic National Committeeman for the District of Columbia; and Lillian Adkins Sedgwick, vice chairperson of the District of Columbia Democratic State Committee. Ms. Sharon Pratt Dixon, Democratic National Committeewoman, will be along shortly.

Mr. Washington, we welcome you. Without objection, all of the statements will be made a part of the record and you may proceed.

TESTIMONY OF ROBERT WASHINGTON, CHAIRMAN, DISTRICT OF COLUMBIA DEMOCRATIC STATE COMMITTEE, ACCOMPANIED BY JOHN HECHINGER, DEMOCRATIC NATIONAL COMMITTEEMAN FOR THE DISTRICT OF COLUMBIA; SHARON PRATT DIXON, DEMOCRATIC NATIONAL COMMITTEEWOMAN; AND LILLIAN ADKINS SEDGWICK, VICE CHAIRPERSON OF THE DISTRICT OF COLUMBIA DEMOCRATIC STATE COMMITTEE

Mr. WASHINGTON. On behalf of the Democrats of the District of Columbia, let me extend my sincere gratitude to the chairman and members of the subcommittee for the privilege of appearing before this august body in order to share with you our deep concern over the disenfranchisement of approximately 750,000 District residents, citizens of these United States.

"All peoples have the right of self-determination, and by virtue of that right they freely determine their political status and cultural development." And so declare the International Covenants on Human Rights, formulated three decades ago by the United Nations and ratified just last year.

But notwithstanding this profound declaration, there continues to exist in America a serious, if not outrageous, breach of the human and civil rights of three-quarters of a million people. While we have a limited form we are not permitted to fully govern ourselves. Thus, a real question that remains for ultimate determination by our National Legislature is whether this Nation, or any nation, can continue to deprive such great numbers of its citizens the right to suffrage, and still remain politically viable.

Participatory government in the District of Columbia ended in 1874 when the locally elected legislature was replaced with three commissioners, appointed by the President. The executive branch appointed the District government for the next 100 years, until Congress passed a partial home rule bill, providing for an elected Mayor and City Council. During the past decade and a half, Congress has responded on several occasions to the continuing concern for a more accountable government in our Nation's Capital. Recognition of the status of the District as a progeny of Congress as well as the need for reform was implicit in each instance. The enactment of the 23d amendment in 1961 (which allowed District residents to vote for President), the Reorganization Plan No. III of 1967, the provision for an elected school board in 1968, the nonvoting delegate bill in 1970 and enactment of home rule legislation in 1973, were all in response to the second-class status of the District and the need for reform.

Although each of these reforms was progressive, it does not reduce the absurdity of denying District residents representation in Congress equal to that of the rest of the country's citizens.

President Carter's recent endorsement of full congressional representation for the citizens of the District of Columbia provides the Presidential leadership, so necessary for an early approval, in the 95th Congress, of House Joint Resolution 565, introduced in the House by our distinguished representative, the Honorable Walter E. Fauntroy. The President's support of full congressional representation is certainly in keeping with his unqualified commitment to human rights

around the world. Recognizably, he has realized that charity, if it begins at all, must begin at home. We know that President Carter remains very firm in his stand on the principle of full congressional representation in both Houses of Congress and intends to provide the necessary leadership in achieving this important goal. We believe that the President's leadership and the commitment of the chairman and members of this committee will mean that congressional representation.

House Joint Resolution 565 and related resolutions would amend the U.S. Constitution and thereby accord to three-quarters of a million citizens the right to vote, a cherished and fundamental tradition of American democracy.

The enactment of this amendment, a legislative priority in the 95th Congress we hope would set an historical precedent in that it would, for the first time, grant District citizens the right to full suffrage, a right presently exercised and enjoyed by all other citizens in America, the proposed amendment would grant to the residents of the District Senators and the requisite number of Representatives in the House to which the District would be entitled if it were a State.

The issue, however insubstantial, arises as to the propriety, but more importantly, the validity of such an amendment. To be valid, such an amendment will require the adoption by two-thirds of each House of Congress and the legislatures of three-fourths of the States. The question remaining is whether it is constitutionally proper to grant the right to suffrage to three-quarters of a million people who pay more than $1 billion in Federal taxes per year but whether it is politically appropriate. Should we not have a vote in deciding how money is spent? Are we less citizens because we happen to reside in Washington?

District residents have long heard persons argue that according full congressional representation to the District is constitutionally impermissible. Indeed some would argue that it is unconstitutional. I take their point to be that because historically, full congressional representation in the Congress was and is based on being a State, the District cannot have full congressional representation because it is not a State. We regard that argument as being a red herring. The constitutional amending process is designed to expand the basis under which Members of Congress may be elected. I cannot believe that someone would seriously argue that two-thirds of the Congress and three-fourths of the States could not change the way we elect Members to this great body. I do not therefore think it can be gainsaid that the U.S. Constitution is a document capable of expansion to insure the guarantee of the basic democratic rights of all Americans citizens barring none.

Ten American States (New Hampshire, Idaho, Montana, South Dakota, North Dakota, Delaware, Nevada, Vermont, Wyoming, and Alaska) have fewer residents than the District but have an aggregate of 34 Members of Congress. On a per capita basis, there is one voting Member of Congress for every 143,000 citizens in those States, compared to one nonvoting delegate for the 750,000 citizens in the District of Columbia. To compound this wrong, the District has a higher per capita income than any State in the country, tax receipts from Dis-

trict residents represent a high proportionate share of Federal revenues—clear example of taxation without representation.

American democracy is buttressed on the principle of representative government which states that each citizen should have a voice in formulating the national, political will of the people. Furthermore, fundamental to the American political tradition is the promise that none of the obligations of citizenship be imposed upon citizens without "the consent of the governed." Government is to draw its power from the consent of the people.

It appears to us that the rights and privileges of American citizenship including the right to elect Congressmen and Senators are essentials and prerequisites to full citizenship in the District. For example, District residents have all the obligations of citizenship without the corresponding vote in the House or Senate to register their consent or dissent in the deliberations of their National Government. Save, of course, our right to help elect a President. District residents have fought and died in every American war since the District was founded. Surely those who choose to reside in the District do not do so in an attempt to avoid the obligations of American citizenship. Equitable considerations alone would mandate that District citizens be accorded the full panoply of citizenship rights—including the right to suffrage.

In the last session of the 94th Congress, the House of Representatives, for the first time, voted on a constitutional amendment. That vote fell only 45 votes short of the necessary two-thirds for approval of an amendment.

With Presidential leadership and bipartisan support in the Congress, the Democrats of the District of Columbia believe a constitutional amendment granting full congressional representation to the District can be approved early in the 95th Congress.

In conclusion, permit me to reiterate the respective Republican and Democratic platforms of 1976 on the question of full voting representation for the District of Columbia.

The Republican platform was clear and to the point:

> The principle of self-determination also governs our position on the District of Columbia as it has in past platforms. We support giving the District of Columbia voting representation in the United States Senate and House of Representatives and full home rule over those matters that are purely local.

And the party to which I take great pride in providing the necessary local leadership was as unequivocal in its position:

> We support full Home Rule for the District of Columbia, including authority over its budget and local revenues, elimination of federal restrictions on matters which are purely local and Full Voting Representation in the Congress.

Further, Mr. Chairman, we in the District are often told that we do not deserve congressional representation because we do not vote or fully participate in the existing political processes. I would have two responses to those who would frame such an argument. First, it seems to us that the extension of such fundamental rights—which are preservative of other basic rights—should not be based on whether a certain percentage of the people in the District in fact vote. Constitutional rights are far too important to be based upon such factors.

Second, the record should reflect that over 171,469 District voters voted in the 1976 Presidential election. This was approximately 64 percent of the total registered roll of 262,887 registered voters.

Thank you, Mr. Chairman, for this opportunity to appear before you to express the sentiments of the Democrats of the District of Columbia.

Mr. EDWARDS. Thank you for your splendid statement, Mr. Washington.

Ms. Sedgwick, do you or Mr. Hechinger have anything to add?

Mr. WASHINGTON. Mr. Chairman, I would like to recognize our National Committeewoman Sharon Pratt Dixon who was late. She is here.

Mr. EDWARDS. You are welcome.

Ms. DIXON. Thank you, Mr. Chairman. Mr. Hechinger is going to speak for the national committee.

Mr. EDWARDS. Mr. Hechinger.

Mr. HECHINGER. I think that in the interests of time, Mr. Chairman, I will just say that I've been here before. I just want to make the record 100 percent and have a batting average of being here and speaking on behalf of full representation for the District.

I think there is something new today that I have not noticed before, and that is this hearing room is facing south. Today's testimony is certainly unique in that respect, and I hope that we get favorable consideration.

[Laughter.]

Mr. WASHINGTON. Mr. Chairman, I'd like to add, if I may, just one further point.

For the record, I would like to submit some information compiled by the Board of Elections and Ethics in Washington regarding voting patterns in the District of Columbia, which I think the committee will find impressive.

I would also like to bring to the subcommittee's attention a certificate of award, America Vote 1976, which was given to the District of Columbia. In population categories over 250,000, the District placed third in the Nation in increasing voter turnout on November 2, 1976 over November 5, 1974.

This, I hope will refute those who suggest the people of Washington do not participate in the electoral process and a fortiori do not deserve to have such important and fundamental rights extended to them.

Mr. EDWARDS. Thank you. Without objection, it will be received.

Thank you very much for your comments, Mr. Hechinger. Are there any further statements to be made by members of this group?

I would only like to remind you that you come from political areas, and that is where this constitutional amendment is going to rise or fall. And this may be the last time in a long while when you are going to get a shot at it.

This is probably the best opportunity this constitutional amendment has ever had and might have for a decade or so. Therefore, the decision is going to be very largely political. It is a question of whether we have the votes, and it is going to need a lot of help.

Mr. WASHINGTON. Mr. Chairman, let me assure you that we Democrats are fully behind you, and I intend to as a member of the executive committee of the National Democratic Committee to introduce a resolution on Thursday for executive committee consideration and full national committee consideration on Friday. And I hope with

the excellent help of your good friends in California, Chuck Vernata, Bruce Lee and others, we are going to push this through the National Democratic Party.

I also intend to put this before the Democratic State Chairmen's Association for their consideration. We intend to give you all the help possible.

Mr. EDWARDS. Thank you very much. Thank you all for being here today.

Our next witness is Joseph L. Rauh, Jr. Mr. Rauh has been a friend, a consultant, an adviser to this committee for many, many years. In addition to serving as general counsel to the Leadership Conference on Civil Rights, he is also vice president of the Americans for Democratic Action and treasurer of Self-Determination for Washington, D.C.

Mr. Rauh, we are delighted to have you here. Proceed.

TESTIMONY OF JOSEPH L. RAUH, JR., GENERAL COUNSEL, LEADERSHIP CONFERENCE ON CIVIL RIGHTS

Mr. RAUH. Thank you, Mr. Chairman. You're very kind to call me so promptly, because I do have a problem with time.

It is always a privilege to appear before a chairman who is on the same side you are. I spend most of my time in front of chairmen who don't have that same empathy for the positions I hold, and it's nice to be here. I say that with no disrespect to Mr. Butler who may have some questions that will be difficult for me to answer, as he is a constitutional expert in his own right.

I have a statement which was submitted to the committee, and I assume it will be printed here. To save you the time——

Mr. EDWARDS. It will be received without objection, Mr. Rauh.

[The prepared statement of Mr. Rauh follows:]

STATEMENT OF JOSEPH L. RAUH, JR.

My name is Joseph L. Rauh, Jr., and I am General Counsel of the Leadership Conference on Civil Rights, Vice President of Americans for Democratic Action and Treasurer of Self-Determination for District of Columbia. We welcome the opportunity to appear before the Subcommittee today in support of H.J. Res. 554 introduced by Chairman Edwards and H.J. Res. 565 introduced by Delegate Fauntroy. These resolutions propose identical constitutional amendments providing congressional representation for the District of Columbia as though it were a State.

Although other constitutional amendments providing congressional representation for the District of Columbia in various forms have been introduced in this session of Congress, it would seem appropriate to limit testimony at this time to these two amendments which have received the full endorsement of the President of the United States.

Although I have been invited to testify today as a constitutional expert, I cannot refrain from saying a word as a long-suffering resident of the District of Columbia. The struggle for self-government for District residents has been a long, uphill one. We were not allowed to vote for President until the 1960s. We were not given a voice in either House of Congress or even a partial share in local government until the last few years. Everything has come to District of Columbia too little and too late.

I suppose I could try and imitate Senator Dirksen and suggest that full District of Columbia representation in the Congress is an idea whose time has come. But voting representation in Congress is an idea whose time came 176 years ago and residents of the District have been deprived individuals ever since. Still, on

the simple principle of "better late than never", we urge the Congress to act now at long last.

In my judgment, H.J. Res. 554 and H.J. Res. 565 raise no substantial constitutional issues. Most respectfully, I suggest that the constitutional issues that have been raised about the various amendments for voting representation are without substance and are little more than roadblocks thrown up by those who seek to prevent the District from obtaining representation in the Houses of Congress. The District has lived in the shadow of constitutional "red herrings" long enough and Congress should lay these constitutional questions to rest once and for all by the enactment of the amendments proposed by Chairman Edwards and Delegate Fauntroy.

There is a heavy burden on anyone contending that a constitutional amendment is unconstitutional. The proposed amendment for District of Columbia representation in Congress will have to be adopted by two-thirds of each House of Congress and the legislatures of three-fourths of the states. If the idea of enfranchising District of Columbia residents is sufficiently powerful to obtain the support of two-thirds of each House and three-fourths of the state legislatures, only the most compelling argument would persuade any court to interpose itself against such an expression of national will.

Far from any such compelling argument against the validity of the proposed constitutional amendments, the only argument being dredged up against them is that old chestnut based upon the last clause of Article V of the Constitution which provides "that no State, without its consent, shall be deprived of its equal suffrage in the Senate." That clause, as every school child knows, came into the Constitution through "the Connecticut compromise" between the big and little States. It was intended to prohibit differences in Senate representation between States and to ensure that the little States would forever be on an equal footing in the Senate to offset the larger States having House dominance based on population. To suggest that a constitutional clause permanently ensuring equality between the States in the Senate should bar forever a constitutional entity other than a State (i.e., the District of Columbia) from participating in the Senate is to stretch the framers' intention into an area never contemplated by them.

Significantly, Article I, Section 3 of the Constitution, which provides that "the Senate of the United States shall be composed of two Senators from each State. . . .", was not made unamendable. Had the constitutional framers desired to limit representation in the Senate to "each State" and thus forever exclude other entities, it would have been simple enough to make this clause unamendable. But they did not do this; rather they simply provided that "no State, without its consent, shall be deprived of its equal suffrage in the Senate." The framers of the Constitution thus made unamendable the provision for two Senators (equality between the States), but left open for amendment the provision limiting representation in the Senate to States.

Over and over again, congressional committees, including Senate committees, have come to the conclusion that senatorial representation for the District would in no way violate the above-quoted provision of Article V. For example, the Senate Committee for the District of Columbia in the 67th Congress made short shrift of the Article V provision as follows:

" * * [T]he plain meaning of this provision is that no State shall have any greater numerical representation in the Senate than any other State. It can not mean that the aliquot share of the legislative power possessed by a State at any given time can not be reduced, as the proportion of that power, which was originally 2 as to 26, has been steadily diminished by the admission of new States until it is now 2 as to 96 [now 2 as to 100]".

The present Administration supports the constitutionality of District of Columbia Senate representation. The previous Administration, in line with its predecessors, likewise supported the validity of District of Columbia Senate representation amendments. In a letter to Chairman Celler of the House Judiciary Committee dated July 20, 1971, Deputy Attorney General Richard G. Kleindienst found Senate representation "consistent with the Administration's objectives" and opposed an amendment that failed to provide for Senate representation.

At least equally significant, then Assistant Attorney General William Rehnquist testified before the Senate Judiciary Committee on June 1, 1970 in support of the Administration's position for District of Columbia Senate representation. Mr. Justice Rehnquist is likely the most strict constructionist to sit on the Supreme Court Bench in the 20th Century. His testimony leaves little substance to

the suggestion that there are any conceivable constitutional roadblocks to proposals for District of Columbia Senate representation. The time has long since passed when anyone can seriously question the validity of a constitutional amendment for District of Columbia Senate representation.

Once the issue of the last clause of Article V of the Constitution is out of the way, it is hard even to conjure up a problem about the constitutionality of the Edwards and Fauntroy amendment resolutions. Certainly, the repeal of the Twenty-third Amendment and the treatment of the District as a State for purposes of the election of President and Vice President raises no more problem than the Twenty-third Amendment did when it was enacted. And permitting the District to ratify constitutional amendments raises no constitutional issue; three-quarters of fifty-one legislatures will be required to ratify a constitutional amendment in the future rather than three-quarters of fifty.

The issue before the Congress is not one of Constitutional violation, but of implementing the spirit of our Constitution by enfranchising three-quarters of a million people. The proposed amendment meets every test of constitutionality and every test of fairness as well. Justice has been too long denied the residents of the District and only action in this 95th Congress can prevent that injustice from continuing longer.

Mr. RAUH. I am anxious to get to the questions. I'll just make a few remarks before the questioning.

I was invited here this afternoon as a constitutional expert. It's very flattering to be called an expert on anything. But I really am here more as a long-suffering resident of the District than anything else.

After World War II, we went to work to improve things in this city as early as the forties. With the help of then Congressman Estes Kefauver, we got a bill through the House for home rule. Things finally started moving. But it's been an uphill struggle.

I don't know why the Congress has felt so resistant to our struggle. It's an obvious struggle for rights. It's not much different than our Colonies struggle for rights. We finally extracted the right to vote for President, I guess that was about 1960 or 1961.

Then we extracted the partial home rule we have now. After losing out on home rule in the sixties, we won partial self-government in the seventies. We also got a delegate to the House. But there was and is a reluctance to give us the whole thing.

I don't see any reason why District residents shouldn't have the whole democratic ball of wax. We are citizens. We do everything that citizens do. We are soldiers. We are taxpayers. So I just find Congress resistance to our rights rather strange.

Now we are here asking for one more thing—total congressional representation. I have to state right at the beginning that I was shocked at the District of Columbia Democratic Party's suggestion that we'll take a Senate delegate for an interim period. I'm not for reaffirming our second-class citizenship. I don't want to reaffirm the fact that I'm a second-class citizen. I'm a first-class citizen of the United States.

I wouldn't mind being a Senate delegate myself—at least you get on the floor, you get to shoot your mouth off. But to accept a halfway measure now at this late date seems to me very Uncle Tomish.

You know what would happen if we ever got an interim Senate delegate? We'd be done with full representation for 20 years while people say, "Let's see how it works in the Senate with a delegate." And then, of course, I don't think you'd get the Senate delegate anyway if you got such a bill over to the Senate. I think they'd probably say it was as foolish as I see it.

All I can say is I'm unequivocally for the Edwards-Fauntroy resolutions which give us two Senators and the number of Congressmen we'd get if we were a State.

If Senator Dirksen was sitting here, he'd say this is an idea whose time has come. Well, my answer to that is this is an idea whose time came about 100 years ago; we've been fiddling around with this idea for just too long.

So much for my deep feelings as a citizen of the District. I don't know whether I qualify as a constitutional expert or not. But since I've been invited to testify as that, I will say that I have studied constitutional law for 45 years and I find suggestions that there is a constitutional infirmity here—I want to choose the right word, I don't want to overstate it—I find it ridiculous to suggest that two-thirds of the Congress and three-quarters of the State legislatures can't decide that the District of Columbia should be enfranchised. I find that preposterous.

What do they come up with when they suggest that there is some difficulty about enfranchising us? They talk about a clause at the end of article V of the Constitution which every schoolboy knows was intended to do something else.

That clause says that you can't amend the constitutional provision that every State shall have two votes. That was done for a very specific reason. Our federalism depends upon States having rights, but not being dominant over the Federal Government.

At the Constitutional Convention, there was a big fight between the big and the little States. Well, what would have happened if the constitutional fathers just allowed the big States to run things? Or were they going to protect the rights of small States as well?

Our Founding Fathers were pretty smart; they made a compromise which made possible the founding of this Union. The House of Representatives represents the people, and therefore it was based on population. The Senate represents the States and therefore it was based on equality. That was, I guess, one of the great compromises of all time. And my hat's off to the people that did it.

But the idea that this compromise should prevent others from getting equality was never suggested, and was indeed farthest from their thoughts. These people framing the Constitution were enfranchising Americans. The idea that at the same time they were perpetually disenfranchising other Americans, I find incredible.

The Founding Fathers were trying to enfranchise people. To suggest that they were disenfranchising the people in some future Capital of the country, I find unbelievable.

In fact, I've never seen an argument that made any sense on this point. What's so difficult is that people use this argument without thinking.

I don't know just how to refer to our opponents. I certainly refer to no one present and I really refer to no one in particular. But there are a lot of people who don't want two more liberal Senators such as we would get from the District of Columbia. Likely, there would be two blacks. Likely, there would be two Democrats. Likely, there would be two liberals. That's what the constituency is here.

If somebody wants to come out and say, "I don't want to change the balance of power in the Senate by having a couple more liberals

here", that's a perfectly decent argument. I'm perfectly willing to listen to that.

I think it makes perfectly good sense for a conservative to say, "I don't want two more liberals in the Senate. We've got enough trouble now."

But, to hide that feeling under a nonexistent constitutional argument, I find hypocritical. There is just no serious constitutional argument.

Indeed, a lot of people think we can obtain congressional representation by statute. I think there is some credibility to that argument. But I am not proposing that course. I would like to say why to the members of the committee present this afternoon.

I think, politically, it might be even harder to get a statute than to get the proposed constitutional amendment. The President of the United States has come out for the constitutional amendment. He has given us a lift. I think we all ought to take the lift he has given us and support the amendment.

In other words, if somebody were to come here and say, "Well, no, let's not take what the President has offered us, namely, a constitutional amendment, let's ask for more," I think that would be a mistake. I'm so pleased with the fact that he's supporting a constitutional amendment that I think we ought to work for that exclusively.

I don't come before you today saying do this by statute. I have seen some quite good arguments that it could be done by statute. But I think it is a political question, and as a political matter I urge you to move fast on a constitutional amendment.

I guess I've got a personal interest in this, Mr. Chairman. I've been working for this amendment for 30 years, and I'd like it to pass before I conk off. I would like to run for the Senate from the District of Columbia. It'll be a little bit hard to run from a wheelchair and I'm getting closer to that wheelchair all the time.

My general reaction to the problem is that we ought to do what the President says and do it promptly. I feel fortunate in appearing before the committe where I know that the chairman feels as deeply for this as I do. I hope before we're through I can persuade Mr. Butler and Mr. Volkmer that this is the direction that we ought to go. I want to thank you all for this opportunity to appear today.

Mr. EDWARDS. Thank you very much, Mr. Rauh. And I might add that those of us who have seen you play tennis, although there is some disagreement here, too——

[Laughter.]

Mr. EDWARDS. I'm sure we would say that you're a good long way from that wheelchair. Thank you for your statement.

Mr. Butler.

Mr. BUTLER. No questions, Mr. Chairman.

Mr. EDWARDS. The gentleman from Missouri, Mr. Volkmer.

Mr. VOLKMER. I just want to comment along the same lines. I'm sure your physical health will permit you to run for the Senate on time.

Mr. RAUH. You're very kind, sir. I hope we can enlist your help in getting us the Congressmen, whatever the number there'll be, plus the two Senators.

Mr. VOLKMER. That, time will tell.

Mr. EDWARDS. Thank you very much.

Mr. RAUH. Thank you very much, Mr. Chairman. I am perfectly willing to argue with Mr. Butler in private, if he wants, some of the constitutional issues. I have a high respect for his intellect and maybe we'll have him leading the fight for us before we're through.

Mr. BUTLER. Well, Mr. Chairman, if I may, it's quite obvious that the witness has not followed my career as closely as I have. [Laughter.]

I have come to the conclusion that it would be appropriate for the District of Columbia to be represented in the House of Representatives. And so I really didn't think we had anything to argue about on that particular point.

If you do have time, I would be interested in talking with reference to whether it would be appropriate or inappropriate to reserve in the submitting resolution the question of a State which changes its mind between its ratification and ratification by three-fourths of the other States. Do they have that privilege or not?

My thinking is that in the interest of clarity, we ought, if there are no constitutional impediments, to make that clear in the submitting resolution so that there would be no cloud over the ultimate ratification. I would be interested in your views on that if you have time.

Mr. RAUH. I have all the time that you want, Congressman Butler. I did say I had a time problem, but I was put on the stand promptly so that I could meet my schedule. So thank you, I do have the time, and please ask anything you want.

Your counsel did raise the rescission question with me yesterday. I did think about it, and I am prepared to answer it.

I agree with you. I think it would be well to have the amendment state the answer to the question of reversing a ratification. I believe, taking ERA as an example, that at the present time, a State cannot change its mind and withdraw approval under the existing ERA congressional authorization.

I believe that because the precedents to date indicate that—not Supreme Court cases, to which I'll come in a minute—but a number of instances like the ratification of the 14th amendment, where retractions were not permitted by the Secretary of State. The Secretary of State then was a very distinguished lawyer, Mr. Seward, and he refused to accept a revocation of an approval of the 14th amendment.

That was obviously a political decision. The Republican Party at that time was all for the ratification of the 14th amendment, so they made a political decision that they were not going to accept a revocation of an approval. But that was the precedent at the time the ERA amendment was sent to the States.

And I think that you cannot revoke on ERA. But I think it would be better to take the cloud off, as you put it. I don't know particularly that I care which way you do it, but I do think a constitutional amendment should clarify that point.

We almost had a constitutional crisis in this country over the Dirksen amendment on that very point. I'm sure the chairman will remember that, after all the Supreme Court cases on the one-man one-vote principle, Senator Dirksen offered an amendment saying that one-man one-vote applied only to one house of a State legislature and you could have a gerrymander in the other house.

Dirksen didn't try to put his amendment through Congress; he couldn't have passed it there. He tried to get two-thirds of the States to call a constitutional convention. He got very close. Those of us who favored one-man one-vote had our hair standing on end worrying for fear he was going to make it to a constitutional convention and we were arguing against it.

We got a couple of the States to revoke their calls to the convention, and the issue then arose whether those revocations were any good. I was arguing that they were good, but if you want to know the truth, I guess the better opinion is that the revocations weren't any good if you take the 14th amendment precedents as valid. Therefore, I would say Congress should act and clarify the situation with any new amendment.

The Supreme Court decision that is closest on point is *Coleman* v. *Miller*. That was a case decided by Chief Justice Hughes on the child labor amendment.

Kansas had defeated the child labor amendment. About 13 years later they passed it, 20 to 20, with the Lieutenant Governor making the 21st vote, to pass the amendment.

The 20 that lost brought a suit in Kansas for a mandamus against the Secretary of the State of Kansas, saying you can't pass this amendment because you've already defeated it. It's the reverse, really, of what you put to me—revoking an acceptance. This was accepting after previous defeat, but I don't see that it's really too much different.

At any rate, the Supreme Court within a very divided Court and with 4 opinions, I think, decided that this was up to Congress, that they were not going to decide whether a State had ratified or hadn't ratified. If *Coleman* v. *Miller* is still the law, ERA would be left to Congress, and I think what Congress would have to say is that you could not revoke a previous acceptance of ERA.

But I still feel that despite that state of the law for ERA, it would be wiser to clarify this in future amendments. We've learned our lesson. We have had two lessons where this issue has divided our country. One's ERA and one's the Dirksen amendment.

Knowing that much about the past, it would be wiser for Congress to act—and I'm not suggesting which way you want to go, or whether you should go one way or the other on this.

I would simply say that I think Congress ought to tell the country ahead of time what its view is on the subject both of refusing and then passing an amendment, and passing and then revoking one. I think the law today is that you cannot revoke an acceptance because of past practice; since Congress didn't act in the ERA amendment, I think that's the law for the ERA.

I don't think, however, that it should be left open, and I agree with you completely.

Mr. BUTLER. All right, thank you. One more question along those lines.

The ERA precedent you mentioned, of course, leaves some cloud over that question. Not a great cloud, perhaps. Would it jeopardize the ERA position if in this amendment, we said ratification or acceptance can be rescinded? If we said that in the resolution for the District of Columbia amendment, would it have any bearing at all on the validity or lack of it with reference to ERA?

Mr. RAUH. I would think not, sir. In my opinion the ERA law is set by the precedents as of the moment you passed ERA. It would be a terrible thing to jeopardize that. I would feel strongly you shouldn't do that.

But I think on all future amendments you ought to resolve the problem.

Mr. BUTLER. I thank the witness. Mr. Chairman.

Mr. VOLKMER. Mr. Chairman.

Mr. EDWARDS. Mr. Volkmer.

Mr. VOLKMER. You're not saying—to proceed one step further—that if by March of 1979 only three more States have ratified, that there won't be a test case as to ERA?

Mr. RAUH. Well, I think there will be a test case. But if Chief Justice Hughes' opinion is right, the test case will fail.

Mr. VOLKMER. It's not on the point——

Mr. RAUH. Well, it is on the point of leaving it up to Congress to decide. It is not on the merits of ratification, or of withdrawing the ratification. You're right about that. But Hughes did say these are the kind of problems left to Congress.

Mr. VOLKMER. If we follow that reasoning?

Mr. RAUH. Yes, that's right. But I wasn't arguing that the Court settled whether a state could or couldn't revoke. I said that Congress would make the decision, rather than the judiciary.

Mr. VOLKMER. I have one other question. Assuming that the Congress submits to the States a proposed constitutional amendment providing for full voting representation for the District and it is ratified by the States, right now, what is your ultimate objective for the District of Columbia other than that?

Mr. RAUH. I thought the President said it very well in his recent statement. I thought it was a very farseeing thing for the District. I would say that it contains almost everything for the District I believe in.

I don't mean that I had any great input into it. I simply mean that I thought it was a very statesmanlike position on what is needed for the District of Columbia.

Obviously, I believe in as much home rule as we can have. And I believe in as much enfranchisement as we can have. But I thought the President came pretty close to stating everything I would have had on my own agenda.

Mr. VOLKMER. I have one other issue I would like to explore. It is recognized that this is our Federal Capital, is it not?

Mr. RAUH. Yes, sir, but I don't think that negates what I have been saying. As a matter of fact, I would say it supports it. Of all the people that should help govern the country and should have an input into the Congress. People here whose lives are devoted to governmental issues because they do live in the Capital, because they live with those issues, because they have more in their newspapers about them because when they wake up in the morning they're reading about what happened in Congress the day before, and because they get pretty well educated about governmental problems—for all the reasons we should have congressional representation.

Mr. Chairman, I received a note from Mr. Washington and I want to read it. That seems only fair because of my statement about the Senate Delegate. I want to be perfectly fair with Mr. Washington.

This is his statement:

I said two Senators and as many Congressmen and a nonvoting Member of the Senate pending the ratification of the congressionally passed House Joint Resolution 554. That is the Edwards resolution.

I did not request it as a compromise, a nonvoting Senator in lieu of two Senators, but pending ratification. This assumes final Congressional action on House Joint Resolution 554.

"I did not request it as a compromise, a nonvoting Senator in lieu of two Senators, but pending ratification. This assumes final Congressional action on House Joint Resolution 554."

I wanted to state his position as accuratcly as Mr. Washington would like it stated. I would say that I still disagree with injecting the question of a Senate Delegate into the fight now. I think we do better to zero in on what the President is for, and let's get it.

I think that the Senate Delegate proposal was made in good faith by Mr. Washington. I'm glad I got to read his note to clarify it. But I guess I think it's a mistake of judgment to inject anything more now. We're on the track, and I sure don't want to get off this track right now.

Mr. EDWARDS. Well, thank you Mr. Rauh and Mr. Washington for the clarification.

Thank you very much, Mr. Rauh.

We will now hear from a panel of constitutional experts.

Our first witness will be Peter Raven-Hansen, a member of both the District of Columbia and Massachusetts bar. While attending Harvard Law School, Mr. Raven-Hansen published in the Harvard Journal on Legislation an article entitled "Congressional Representation for the District of Columbia: A Constitutional Analysis."

Our other panel member is Prof. Herbert O. Reid, Sr. Professor Reid, you may also come to the table.

Mr. Raven-Hansen, we are delighted to have you here. We look forward to your comments. Go ahead.

TESTIMONY OF PETER RAVEN-HANSEN, ATTORNEY AT LAW, AND HERBERT O. REID, PROFESSOR OF LAW, HOWARD UNIVERSITY SCHOOL OF LAW

Mr. RAVEN-HANSEN. Thank you, Mr. Chairman.

On the more than 20 prior occasions when Congress has taken up the question of congressional representation for the District, the alternatives that have been considered have been viewed as limited by the text of the constitutional provisions dealing with representation, which speak in terms of representation of the people of the States, and by negative inference exclude the people of the District.

I'd like to suggest that there is a long line of Supreme Court cases which have interpreted constitutional provisions speaking in terms of the States to include the District of Columbia, and I think consideration of that line of cases might be helpful in your deliberations on the proposed resolutions.

One such constitutional provision is that which provides that direct taxes shall be apportioned among the several States which may be included within this union. That was held to extend to the District by Chief Justice Marshall, and that is especially significant because that

is to be found in article I, section 2, which is the same section of the Constitution dealing with congressional representation in the House.

The right to a jury trial in criminal cases which was granted in the VI amendment, has also been applied to the District, although it speaks of trials in a State and district wherein the crime shall have been committed.

The interstate commerce clause has been applied to the District, although it speaks, of course, of commerce among the several States.

The extradition clause, which speaks to the removal of fugitives to the State having jurisdiction of the crime, has been applied to the District.

Finally, in 1949, the Supreme Court upheld a congressional statute that extended diversity jurisdiction to Federal cases between citizens of the District and citizens of the States, notwithstanding the language of diversity jurisdiction clause, which speaks to controversies between citizens of different States.

And in that decision—or the concurring opinion at that time—Justice Rutledge noted, and I think it's worth quoting, that "key words like 'State' do not always and invariably mean the same thing" in the Constitution.

The rule of constitutional construction which I think is implicit in that line of cases, was made explicit in a unanimous decision of the Court in 1973. That rule, in substance, was that whether or not the District can be considered a State within the meaning of a particular statutory or constitutional provision, depends upon the principle or purpose that that provision serves.

And I think it's undisputed that the principles served by those constitutional provisions dealing with congressional representation, is that the people shall choose whom they please to govern.

Accordingly, I think that an argument can be made that the District should be considered a State for purposes of congressional representation. It follows that Congress has the power by simple statute pursuant to article I, section 8, to enfranchise District residents.

This analysis would preserve the unique status of the District as the Federal City, and I think the analysis in the same line of cases to which I have referred has viewed Congress itself as the District's State legislature and executive authority in effect that this argument reduces, if not removes, some of the difficulties which people have found in what I would regard as the technical provisions of the Constitution, dealing with mechanics of holding elections, the filling of vacancies in the House and the Senate, and voter qualifications.

Let me state in conclusion that I personally favor a constitutional amendment to enfranchise the District along the lines of Joint Resolution 554, because I think that solution is the most obvious and the most elegant and the most consistent with the plain language of the Constitution.

But in canvassing all the possibilities at this time, I think that the analysis that I have described to you should be examined both as one possible alternative to amendment or fullfledged statehood, or retrocession; and perhaps more importantly, as an answer to some of the obstacles which opponents of representation have seen in those technical provisions of the Constitution to which I referred.

Thank you very much.

Mr. EDWARDS. Thank you very much.

The other member of our panel is Prof. Herbert O. Reid, Sr., a distinguished professor of constitutional law. Professor Reid has been a professor of law for 31 years, and has taught constitutional law at Howard University, University of Puerto Rico, Boston College, and Rutgers University.

Since 1947, he has participated in almost every major civil rights case, including most recently the *Board of Regents of the University of California* v. *Bakke*.

Professor Reid has a particular expertise in the issues being considered today by the subcommittee. In oral argument before the U.S. Supreme Court he advocated for the confirmation of representative government in the very famous case *Powell* v. *McCormack*.

Professor Reid, we are honored to have you with us here today. You may proceed.

TESTIMONY OF PROF. HERBERT O. REID, SR., HOWARD UNIVERSITY SCHOOL OF LAW

Mr. REID. Thank you, Mr. Chairman. It is a pleasure I have been invited and with my state of senility I will not quarrel if you refer to me as a constitutional expert. But it is a pleasure to reflect upon, first, whether the language of House Joint Resolution 554 is preferable to 139. I conclude in the text of my statement that I prefer the language of 554 and Mr. Fauntroy's version of the same bill.

In terms of whether or not the constitutional approach is more desirable than the legislative approach, like the witness before me, I feel that it may be possible for Congress to achieve the goal of full representation by statute, but I don't think it is appropriate, or politically wise at this particular time to run that risk.

I think that the constitutional amendment has momentum, and the constitutional amendment would settle all constitutional questions that might be raised as to legislation.

I've also stated my reaction to some of the questions raised in your issues memorandum.

If there are other questions to which you would like me to address myself particularly, Mr. Butler and Mr. Volkmer, I would be happy to do so.

Mr. EDWARDS. Thank you very much. Without objection, both statements will be made part of the record.

[The prepared statement for Mr. Reid follows:]

STATEMENT OF HERBERT O. REID, SR., CHARLES HAMILTON HOUSTON DISTINGUISHED PROFESSOR OF LAW, HOWARD UNIVERSITY SCHOOL OF LAW, WASHINGTON, D.C.

This is my thirty-first year of Law School teaching. During that time I have taught and specialized in the field of Constitutional Law at Howard University School of Law, University of Puerto Rico School of Law, Boston College of Law and at Rutgers University, Newark, School of Law. In addition to my teaching and writings, I have participated in almost all of the major civil rights cases decided by the Supreme Court, from 1947 down to the *Board of Regents of The University of California* v. *Bakke*, presently awaiting oral argument in the Supreme Court. Before the Supreme Court, I had the pleasure to argue in *Powell* v. *McCormack*, for affirmance of the principle of representative government. I am happy to have been invited to address myself to aspects of that essential issue by commenting on the several bills pending before this Subcommittee relating to representation of the people of the District of Columbia in the Congress of the United States.

Your staff has requested that my testimony before the Subcommittee on Civil and Constitutional Rights on the issue of Congressional Represeutation for the residents of the District of Columbia be focused as foiiows :

"I am enclosing, for your iuformation copies of the issues memorandum and the committee report on H.J. Res. 280 which is exact in language iu H.J. Res. 139, now being cousidered. We ask that your comments speak to whether the language of H.J. Res. 139 or 554 is preferable. We also ask that your remarks address the issues cited in the enclosed memorandum, and that you comment on why a constitutionai ameudment rather than legislatiou is required, how such an amendmeut would/should be implemented, and any additional issues you think important for the Subcommittee's review."

I. WHETHER THE LANGUAGE OF H.J. RES. 139 OR 554 IS PREFERABLE

It is my view that the language of H.J. Res. 554 is preferable. I would urge this Subcommittee to report favorabie H.J. Res. 565 which is identicai to H.J. Res. 544. It appears that this is the bill and language which the D.C. Task Force has supported.

Vice President Walter Mondale has stated that the following are highlights of some of the specific decisions reached by President Carter ou some major issues identified by the D.C. Task Force.

"First, to promote equai representation, the Administration supports approval of a Constitutional Amendment proposed by District Delegate Fauntroy, which would provide full voting representation in both Houses of Congress, as well as iu the selection of the President and Vice President and in the ratification of Constitutional Amendments.

"Second, to expand 'Home Ruie' for the District, the Presideut supports Congressional action to eiimiuate Presidential review of mayoral vetoes that are overridden by the City Couucil, to repeal the 'federai enclave' and to streamline the procedures for Congressional review of locally enacted legislation.

"Third, to provide greater equity and predictability in the financial relationship between the federal governmeut and the District, the Administration is committed to an increase in the fiscal 1979 Federal payment authorizatiou from $300 miilion to $317 million, with a simultaneous effort by the District to improve utiiization of existiug resources through reductions in any excessive employee/authorization ievels; to share finaucial responsibility for RFK Stadium and pension plan funding; and to extend the City's authority to borrow from the Federal Treasury."

The several joint resolutions which I have examined, H.J. Res. 139, 142, 392, 565 and 554, ali provide in one form or another for a constitutional amendment to achieve representation for the District of Columbia in the Congress of the United States. House Joint Resolutions 139, 142 and 392 are all similar. H.J. Res. 139 in four sections provides for two Senators and proportional representation in the House, provisions to fiil vacancies, preserving the Twenty-Third Amendment and an enabling provisiou. H.J. Res. 392 and 142 are similar to H.J. Res. 139.

H.J. Res. 565 and 554 whiie identical, are quite different from H.J. Res. 139. H.J. Res. 565 and 554 would provide for voting representatiou in the Congress, authority to elect a President and Vice President of the United States, power to ratify constitutional amendments and for repeal of the Tweny-third Amendment. The central approach of these resoiutious is to treat the Distriet as a State for purposes of representation in the Congress, election of the President aud Vice President, and ratifying amendments to the Constitution. The rights and powers to be exercised by the people in the District of Columbia would be prescribed by Congress from time to time.

Professor Saltzburg in his statement to this Subcommittee under date of October 6 has provided an excellent analysis of the conteuts of H.J. Res. 139 and 554. I could not improve upon his analysis, I commend it to your further study. However, I disagree with Professor Saltzburg that H.J. Res. 139 is to be preferred to H.J. Res. 554. Though he argues for H.J. Res. 139 he would incorporate into H.J. Res. 139 much of the language of 554.

I prefer the approach to H.J. Res. 554. Apparentiy the D.C. Task Force and President Carter have come to the same conciusion.

II. ISSUES RAISED BY THE AUGUST 3, MEMORANDUM "HEARING ISSUES IN D.C. REPRESENTATION"

H.J. Res. 554 resolves the important issues raised in the subject memorandum in a manner in which I would agree.

First, I do not beleive that Statehood is a viable aiternative to the increased representation of the people in the District of Columbia. The Federal Govern-

ment's interest in the seat of Government would have to be maintained. If the District of Columbia became a state, Congress could and would from time to time determine the size and nature of the federal enclave within the new state, the enclave might become coterminous with the boundaries of the new state, This approach is productive of much mischief.

Statehood also would apparently destroy the concept of a federal city. It is a novel question to consider whether, by Amendment, Congress can ignore or repeal Article I, Section 8, Clause 17.

By releasing exclusive legislation over the federal district, would Congress be acting in a manner that is constitutionally impermissible? Would Congress be abrogating one of its powers?

This infirmity could be cured by setting aside a portion of the District to be used as a federal enclave. Perhaps Capitol Hill and the surrounding area would be the new federal district. We are talking about communities, groups of human beings—not merely the distinction between federal and non-federal establishments. To draw a line around and through the District stating that from this point forward the area enclosed will be a federal city and the area surrounding will be the 51st State is naive and does not realistically consider the demographics involved.

H.J. Res. 554 provides for representation without creating new problems of federal state relations at the seat of the Federal City.

Secondly, H.J. Res. 554 provides representation and avoids the problems incident to full or partial retrocession to Maryland

Partial or full retrocession (i.e., legislation) does not seem to meet all of the issues that necessarily would arise if such a route were taken. Article IV, § 3 and precedent as set by the retrocession of part of the District to Virginia in 1846 would dictate that Maryland agree to the receipt of any or all of the District. If such assent were given the problem would remain: to what extent would the state of Maryland adequately represent the interests of the people of the District? Would there in fact be adequate representation at all? Would the weight of the District vote in federal elections counterbalance the power of the Maryland legislature to draw up the District voting lines?

D.C. residents could not participate in the election of the Maryland Governor, yet such officer would be empowered to fill congressional vacancies. Most residents of the District are not politically, economically or culturally aligned to the State of Maryland. At times our interests are diametrically opposed to those of Maryland—for example look at the issues of construction of the D.C. Convention Center, the proposed commuter tax, and others.

Occasionally Maryland common law is followed in the courts of the District, but in my opinion any retrocession to Maryland would be extremely difficult to implement and would lead to resistance by citizens of the District and Maryland. Full retrocession to Maryland would defeat the purpose of having a federally controlled district supervised by Congress.

There is nothing in the evolution and development of the District which makes the interest of the residents of the District of Columbia similar to, or compatible with, that of the residents of Maryland.

Retrocession, full or partial, would be viewed by many as an attempt to dilute their political expression by the process of geographical inclusion which has been the antithesis of the one man one vote rules since *Baker* v. *Carr*. Retrocession to many would be viewed as an attempt to deny the right to vote to the inhabitants of the District in violation of the intendment of the Fourteenth and Fifteenth Amendments. See *Gomillion* v. *Lightfoot*, 364 U.S. 339 (1960); *White* v. *Regester*, 412 U.S. 755 (1973); *United Jewish Organization* v. *Carey*,—— U.S. ——, 97 S. Ct. 996 (1977).

III. WHY A CONSTITUTIONAL AMENDMENT RATHER THAN LEGISLATION IS REQUIRED

Since there is no constitutional provision prohibiting the residents of the federal district from enjoying full congressional representation, Congress could if it desired, grant such a right to the District.

A constitutional amendment is the most appropriate way to effectuate full representation in Congress for District residents. Since Article I, Section 3, states that "the Senate * * * shall be composed of two Senators from each State, * * *" allowing a non-state Senate representation necessitates an amendment. The argument that granting this right to the district (i.e., Senate representation) would be contrary to the Equal Suffrage Clause of Article V is not

supported by the plain meaning of the Constitution or the intent of the framers. The historical context has been reviewed extensively in testimony before the Subcommittee, and reports by the Subcommittee members.

There is no constitutional mandate that says the Senate must have 100 members. Should Congress decide to amend the Constitution and allow citizens of the District congressional representation there is nothing in the Constitution to forbid it. Amendment XVII applies to Senators chosen from each State. Arguably it is inapplicable since the District of Columbia is not a state. The proposed amendment speaks directly to the issue of Senators chosen by the District, and when applying constitutional standards to the District (vis-a-vis Senate representation) it should supersede Amendment XVII.

Once congressional representation is granted, the Congress should delegate to the local government the responsibility for selecting places to hold elections.

I do not agree with the position that the District of Columbia is constitutionally analogous to territories of the United States and therefore Congress by statute could achieve the purposes of full representation for the people of the District of Columbia. I agree with the conclusion of House Report No. 94–714 that a "constitutional amendment is essential" for the citizens of the District to have voting representation in Congress.

The framers clearly conceived of an area as a separate seat of government, they also conceived of other geographical areas that might remain territories or might later be admitted as states to the Union. Article I, Section 8, Clause 17, indicates this difference:

"Congress shall have power * * * to exercise exclusive jurisdiction in all cases whatsoever over such District (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress become the seat of government of the United States and to exercise like authority over all places purchased, by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings."

Though it is clear that Congress has plenary power as to the District, that power must be exercised consonant with the letter and spirit of other provisions of the Constitution.

The constitutional route followed by H.J. Res. 554 seems to me more desirable in that it settles any and all constitutional objections which might be raised as to congressional legislation. Politically and legally it would seem desirable to put this issue of voting representation to rest by the devise of a constitutional amendment First, it would settle collateral constitutional objections which might be raised as to legislation. Secondly, it would place voting representation for the people of the District in a posture of permanency rather than resting upon the shifting tides of congressional will. A great idea has more permanency carved in the stone of the Constitution than written upon the quicksand of changing political moods.

Whether or not the framers of the Constitution inadvertently omitted provisions for voting representation of the people of the District of Columbia in the Congress of the United States, a constitutional amendment would put this debate to rest and the forward movement of our society to enhancing participatory democracy would continue. The framers within their wisdom did not intend the franchise to be exercised by Blacks nor women. Nevertheless, the Republic has continued to move forward in the advancement of democratic rights where we believe that as a people we can export our concern for Human Rights.

"At the end of a decade marked by congressional and judicial activism in extending the franchise, it seems to many ironic that Congress and the Supreme Court should sit amidst several hundred thousand American citizens who are denied representation in the national legislature. Efforts to gain congressional representation for the District of Columbia have been made intermittently since 1803, but always without success. While other reasons for their failure have been advanced, the principal factor perpetuating the District's non-representation over the years had been the inaccessibility of the sole apparent remedy: constitutional amendment." [1]

I urge you to recommend the passage of H.J. Res. 554 and 565. This would accord the residents of the District of Columbia voting representation in both

[1] Peter Raven-Hansen, Congressional Representation for the District of Columbia: A Constitutional Analysis, 12 Har. J. on Legis. 167 (1975).

Houses of Congress. The unique status of our city as the capital of the federated system would be preserved while enfranchising three quarters of a million United States citizens, giving them what all other citizens exercise as a matter of right.

WASHINGTON, D.C., *October 3, 1977.*

MS. IVY L. DAVIS,
Assistant Counsel, Subcommittee on Civil and Constitutional Rights, Committee on the Judiciary, House of Representatives, Washington, D.C.

DEAR MS. DAVIS: Enclosed please find a brief biographical statement pursuant to your request, and a copy of my article, "Congressional Representation for the District of Columbia: A Constitutional Analysis," 12 *Harv. J. Legis.* 167 (1975). I am submitting the article with this letter as my written statement for the record. For the convenience of the members of the Subcommittee, the article is summarized herein.

BASIC THESIS

Preoccupation with the language of Article I, section 2 of the Constitution and the Seventeenth Amendment, has conventionally led past Congressional committees considering congressional representation for the District of Columbia to consider only the alternatives of a constitutional amendment, formal admission of the District to the Union, or some form of retrocession to Maryland. This conventional analysis has ignored the fact that many other constitutional provisions also speak exclusively in terms of "states," and have been the subject of judicial analysis with respect to the District of Columbia. A review of (1) the origin and purpose of the District of Columbia, (2) the principal cases interpreting constitutional provisions speaking to "states," and (3) the importance accorded the principle of representation by the cases, suggests that under an existing judicial rule of constitutional and statutory construction, the District could be considered a state for purposes of effectuating that principle.

ORIGIN AND PURPOSE OF THE DISTRICT OF COLUMBIA

The history of the drafting of the Constitution and the related debates in the constitutional and state conventions demonstrates clearly that the District was created for the narrow purpose of preserving some form of federal police authority and jurisdiction at the seat of government. Disenfranchisement was neither necessary nor deliberately planned to achieve this purpose. Instead, it was an incidental consequence of Congressional action, or more accurately inaction, in passing an act to clarify what laws were applicable in the District following the effective date of the removal of the national government to the District in 1800. The failure to provide for District representation may be attributed to the perceived scope of the need at the time. When Article I, section 8, clause 17—creating the District—was drafted, no geographic location had even been selected. In 1800, the need was scarcely greater, for the District's population was barely 14,000 people, less than one-third of the minimum population required for the erection of states, and corresponding congressional representation, in the Northwest Territory.

THE CASE LAW

Chief Justice Marshall initially rejected the argument that the District could be considered a "state" within the intendment of the Constitution. In denying federal court diversity jurisdiction under Article III (". . . controversies between the citizens of different States") over controversies between District and state citizens. But sixteen years later, he held that Congress had the power under clause 17 to impose direct taxes on District residents in proportion to population, notwithstanding the plain language of Article I, section 2, the very provision of the Constitution which deals also with representation in the House ("direct Taxes shall be apportioned among the several States which may be included within this Union. * * *"). Subsequently, in a series of cases the Supreme Court also held the District subject to other constitutional provisions speaking to the states, including: the jury trial requirement of the Sixth Amendment (trial by "jury of the State and [judicial] district wherein the crime shall have been committed"); the interstate commerce clause ("commerce * * * among the several States"); and indeed the diversity jurisdiction clause of Article III, effectively overruling Chief Justice Marshall's earlier decision. In the latter deci-

sion, at least two members of the Court observed that key words in the Constitution like "state" cannot always and invariably he given the same meaning.

This line of cases established a rule of constitutional and statutory construction which was explicitly approved hy a unanimous Supreme Conrt in 1973: whether the District may be considered a State within the meaning of a particular statutory or constitutional provision depends upon the character and aim of the provision, or in effect, upon the basic statutory or constitutional purpose or principle it serves.

APPLICATION OF THE RULE

Although the right to vote has not yet been accorded full constitutional status by all members of the Court, the cases clearly consider it a fundamental principle of a democratic society and of the Constitution that the people should choose whom they please to govern them. It is also well established that in analyzing historical evidence and constitutional text the courts are compelled to resolve any ambiguities in favor of that fundamental principle. Accordingly, the relevant constitutional provisions treating congressional representation may be construed to include the District for purposes of effectuating that fundamental principle.

Considering the District a state for that purpose alone is not incompatihle with its continued status as the seat of government, for it remains subject to the plenary powers of Congress. This application of the rule does not violate the "equal suffrage provision" of Article V, for historical materials suggest that it was designed only to preserve a benefit of the Great Compromise—equality among the States in the Senate—and not to freeze the aliquot power of each State. This application of the rule does not open the door to representation of the territories in Congress, because as full statehood is the preordained end of the transitional status of "territory" (and not the end of the District's permanent status as seat of government), the application of the rule of construction is not necessary to effectuate the principle of representation for the people in the territories. Nor, finally, does this application of the rule automatically trigger any other constitutional or statutory provision on behalf of the District, since it is a rule of construction which emphasizes that "state" status for the District varies with the purpose and need of particular provisions.

If the District can be considered a state within the meaning of the constitutional provisions dealing with congressional representation, it follows that Congress may enfranchise the District by simple statute, specifying the necessary mechanics pursuant to its plenary power under clause 17. Admittedly, application of this rule of construction to uphold such a statute is less elegant and more distortive of the plain text of the Constitution than a constitutional amendment. But this approach deserves consideration in view of the invariable dead-ends to which the conventional constitutional analyses have led, the repeated failure of Congress to effectuate the fundamental principle of representation by amendment to date, and the continuing anomaly that the government of the world's greatest democracy sits among some 700,000 citizens who are denied representation in the national legislature.

Sincerely yours,

PETER RAVEN-HANSEN.

Mr. EDWARDS. I recognize the gentleman from Virginia, Mr. Butler.

Mr. BUTLER. Thank you, Mr. Chairman. I appreciate the testimony of the panel. I had an opportunity to review your testimony briefly at dinnertime, so I have some view of it. I find it difficult to argue with the main conclusion that you reach, Mr. Reid.

I would like you, Mr. Raven-Hanson, to clarify, if it is your view that Congress could by statute create voting representatives in the House of Representatives?

Mr. RAVEN-HANSEN. Yes; I believe an argument can be made to that effect, although I personally favor a constitutional amendment.

Mr. BUTLER. I followed that. Now, do you also believe that we could by statute do the same thing in the Senate?

Mr. RAVEN-HANSEN. I think, following the rule of construction that I have drawn from that line of cases, that that could be done. But once again, I would favor a constitutional amendment.

Mr. BUTLER. All right. I understand your argument.

Now let me turn to the question which I presented to the other witness. I would appreciate if both of you would comment on it, because it seems to me this is an opportunity where if we do not jeopardize earlier or pending resolutions, we ought to clarify whether a State can or cannot rescind its acceptance of a resolution of this nature. So I would appreciate it if both of you, whichever order you prefer, would comment on it.

Mr. REID. Mr. Butler, I think that rescission is clear, and I think that the States cannot rescind an approval, and if Congress legislated in the matter—obviously Congress could, but I don't think it's necessary for Congress to declare that the water is wet.

I think that the courts are clear. I would call your attention not only to *Coleman* v. *Miller*, 307 U.S. 433 (1938), but *Lesser* v. *Garnet*, 258 U.S. 137 (1921).

Mr. BUTLER. Now, wait just a minute. Now we want to get that.

Mr. REID. I'm sorry. We have *Coleman* v. *Miller*, 307 U.S. 433 (1938), and *Lesser* v. *Garnet*, 258 U.S. 137 (1921). In addition *Spriggs* v. *Clark*, 14 Pacific 2d 669 by the supreme court of Wyoming.

Sir, I think that basic to this question of rescission is the nature of the compact and the agreement between the people and the national Government. I think that any notion that the people, once given consent to a constitutional amendment may withdraw that consent, would connote that there was a possibility to withdraw consent from a part or parts of the Constitution after adoption. As you know that was the framework or the bottom line of the thinking in interposition, nullification and later secession.

And it would appear to me that the thesis that the people could withdraw consent once having given that consent was firmly established in the negative by the events of history and the court's constant reference to the nature of the compact and agreement implicit in the formation of the Republic.

It would appear to me that once consent is given, such consent is irreversible, similar to the passing of a statute. And I think that one reason for the one-shot approach certainly in terms of approval—one reason for the one-shot approach was that you might have a constitutional convention. A constitutional convention would have had one shot.

And I think that consenting to an amendment is like consenting to joining the union—that consent is irreversible. I think it's possible to agree but not possible to disagree. That goes to the heart of the notion of the indissoluble union.

Mr. BUTLER. Along that same line of reasoning, is a rejection by a State legislature to a constitutional amendment final? Can they reconsider a rejection?

Mr. REID. Yes, sir. I think there's something, sir, there is something in the nature of accepting that you may accept but you may not withdraw that acceptance—the accepting is binding, but the rejection is not. And I have no problem with that.

Mr. BUTLER. Well, that is fine, I just want to be sure that I understood you. Of course, if misguided scholars prevail, and the Congress were to, in its wisdom, state that acceptance could be withdrawn or rescinded prior to attaining three-fourths of the States and certifica-

tion by the Administrator of GSA, you would not question that under those circumstances the State could withdraw or rescind its acceptance?

Mr. REID. Well, I don't know, Congressman Butler—the courts have said in *Coleman* v. *Miller* that the adoption of a constitutional amendment is a political question.

Mr. BUTLER. Yes.

Mr. REID. And obviously it is committed then to both branches of the Government, Congress, and the executive branch that in fact certifies. And whether the two horses would start in different directions I do not know.

Mr. BUTLER. Well, you still agree that executive powers are pretty much limited to what the Congress gives it?

Mr. REID. Depending upon whether or not I am representing Members of the legislature or members of the executive branch. [Laughter.]

You're quite correct, sir.

Mr. BUTLER. All right. One more question, if I may, Mr. Chairman, along this same line.

Assuming that in spite of your recommendations, Congressmen follow this approach. Clearly this would place no cloud over the pending ERA?

Mr. REID. Oh, I don't think so.

Mr. BUTLER. I just wanted to be clear, because that is the argument we most often meet with reference to that.

Mr. REID. Yes, sir.

Mr. BUTLER. Thank you.

Now, would you comment along the same line?

Mr. RAVEN-HANSEN. I have to adopt the analysis of Mr. Reid, but disagree with his conclusion. I think Congress could decide one way or the other that ratification was irreversible or whether it was reversible, but I don't think it rises to the level of the constitutional amendment.

I think the only thing that is clear in what little case law we have in this area is that it is a question for Congress to decide.

And so, if you believe that there is a need for clarification now as to which way to go, it should be done by statute, probably by a supplement to the existing statute on promulgation, which I think is 1 U.S.C. § 106(b). I don't see why this has to be by amendment, and I might add I don't see why it should be linked to representation for the District.

I think that is just burdening presently——

Mr. BUTLER. Well, of course, what traditionally has been done is to state in the submitting resolution that it becomes the law if it is adopted within 7 years.

And my thoughts were that the submitting resolution was the place to clarify. Do you think an overriding statute would be a more appropriate place?

Mr. RAVEN-HANSEN. No, it doesn't override. For the moment if you want to make an argument for the statute, I simply think that which way Congress exercises its discretion on this question of irreversibility of ratification, is a matter of statute. It doesn't rise to the level of a constitutional amendment. And there's no need to announce it in the form of an amendment.

Mr. VOLKMER. Would the gentleman yield?

Along this line, what you are saying is that all we need is the general statute.

Mr. RAVEN-HANSEN. That's right.

Mr. VOLKMER. Applied to all constitutional amendments?

Mr. RAVEN-HANSEN. Stating whether or not ratification could be reversed.

Mr. BUTLER. I thank the witness. Mr. Chairman.

Mr. EDWARDS. The gentleman from Missouri.

Mr. VOLKMER. I would like the witnesses to consider a question which has not been thoroughly discussed—that is retrocession.

First I'd like to discuss partial retrocession. What constitutional problems do you see?

What I mean by partial retrocession is that the Congress cede to Maryland the authority of Maryland Federal representatives to represent the residents of the District.

What constitutional, not practical, problems do you see with that?

Mr. RAVEN-HANSEN. If it were done with the consent of Maryland, I would see no constitutional problem. If, in fact, as you are undoubtedly aware, the people of the District voted in Maryland and Virginia elections until 1800. And they could have voted beyond that date but for the form that the act of February 27, 1800, took, in which Congress declared what law would govern the District.

But it's a question of whether or not you can obtain that consent from Maryland. So I don't think it's a practical problem.

Mr. VOLKMER. You see no constitutional bar to partial retrocession?

Mr. RAVEN-HANSEN. Not if you obtained the consent of Maryland. There still would be technical——

Mr. VOLKMER. Could this be done by statute?

Mr. RAVEN-HANSEN. I believe so.

Mr. VOLKMER. Would you address yourself to that?

Mr. REID. Yes, sir. I respectfully disagree. I think one constitutional argument might be the one I suggested in my earlier remarks: that is, that retrocession, full or partial, might be viewed as an attempt to violate the rights, the voting rights of the people in the District of Columbia, by the process of inclusion, which was what the State of Alabama did in *Gomillion* v. *Lightfoot*, when it took the city of Tuskeegee, Ala., and put it in the county there in order to dilute the voting strength of the inhabitants of the city.

Since then you've had the *Williamsburg* case out of New York as well as other citations. There is no question in my mind that it would be viewed, and I think properly so, as a denial of rights protected now by the court under the 14th and 15th amendments.

I think that retrocession also needs to be viewed in the sense of how we have handled the notion of territoriality in this country. What we have had up to the present is a movement of territory, either to the Federal Government or from the Federal Government back to the States. Territoriality and the rights which flow are part of our jurisprudence.

What is proposed, of course, would not be traditional. Representative Thornton's suggestion is very unique in that we would begin to treat people in areas different from their territorial roots in which they were stationed, fixed. That is foreign to our jurisprudence.

In the other instances of Federal control over Federal enclaves, you have the problem of either concurrent jurisdiction, exclusive jurisdiction, or qualified jurisdiction, but it all flows from the fact initially that people are there as a territorial unit.

This is very interesting and might be objectionable if not done by a constitutional change because the residents of Maryland would then have more of a say-so in the Capital and in the seat of government than other States.

And to me, it would offend the equal representation, the equal participation, something you said earlier, sir, that this is the Capital and it belongs to everybody and to all of the States' inhabitants.

And to me, full retrocession would create the same problem of giving up what is presently a Federal area. How are you going to police the Federal area, you know, all of the problems involved in that?

It would appear to me that you would be right back where you are now in terms of full retrocession.

In terms of partial retrocession, I think you pick up the additional problems of a hybrid situation that could potentially serve the purpose of mischief in terms of treating people in a way different from the territorial approach which we have always used in this country.

Mr. VOLKMER. Do you see any constitutional problem in carrying out a smaller Federal enclave—smaller than the District's boundaries as they are now. For example, a Capitol Hill area enclave with the remainder of the District being completely self-autonomous with self-representation.

Mr. REID. Well, I would attack an enclave by congressional legislation in the District as being offensive to the 14th and 15th amendments with the reasons that I have indicated to you, because it would dilute the voting strength and the power of the people in the District of Columbia.

I think that voting strength is of a unit that has a higher density and interest separate and apart from the larger State of Maryland.

Mr. VOLKMER. No; I'm not saying retrocession at all.

Mr. REID. No, sir. I'm saying if you——

Mr. VOLKMER. It wouldn't apply to Maryland at all. It would have nothing to do with Maryland.

Mr. REID. Well, I guess if you made a Federal enclave, then the problem would be, what are you going to do with the rest of the District?

Mr. VOLKMER. The rest of the District would be self-autonomous as a city, with full voting representation in the Congress.

Mr. REID. Well, I guess I would have no problem with that. I like the notion of a Federal Capital in which the Federal Government can pursue its legitimate interests and yet the people of that District can have full representation not only in local matters, but in national matters, too.

Mr. VOLKMER. Then you see—I didn't understand——

Mr. REID. Everybody—the people in the District are able to vote and control local affairs and have an effect on national affairs, and control local affairs to the extent and degree to which these several bills authorize the Congress to delegate power to the local government.

Mr. VOLKMER. One government?

Mr. REID. Yes, sir.

Mr. VOLKMER. That the people outside the District, then, would be able to have no effect on local affairs?

Mr. REID. Sir?

Mr. VOLKMER. The people outside the District would be able to have no effect on anything in their Federal Capital.

Mr. REID. That's not true. They would have an effect——

Mr. VOLKMER. On local affairs.

Mr. REID. Sir?

Mr. VOLKMER. On local affairs they would have no effect on anything permitted in the Federal Capital.

Mr. REID. That's quite true. That does not offend me. The people in Wilson, N.C., have no effect on what the people in Raleigh, N.C., do in terms of their local affairs.

Mr. VOLMER. Raleigh, N.C.? Oh, yes, they do. Many of the people there have a representative who goes to the State legislature, and they vote on those things. Determination of local issues. The people there would have no effect on the local government in the District of Columbia whatsoever.

Mr. REID. The people in the States would have the effect on local government that they have through the fact that they elect members to the Congress.

Mr. VOLKMER. Congress would have no more effect on it. Self-autonomous completely.

Mr. REID. Well, Congress has effect throughout the United States because of its national interest. And whatever was said to me there would be room for effectuation and national interest, like it is now.

Mr. VOLKMER. What I'm trying to get to is aren't the two completely diverse and conflicting—to say complete self-autonomy and then to say to everybody else outside of that area that it is yours also?

Mr. REID. Well, part of the reason I think the present bills are superior to the statehood approach, is that the present bills provide to me the best of both worlds. They provide for the national interest, and they provide also for the local interest.

Mr. VOLKMER. I won't argue with that if you'll just stick with this issue. There's no question and we'll go no further.

Mr. REID. If you did that, I would be tickled to death. I'm not prepared to go any further.

Mr. VOLKMER. You're not prepared to go for more autonomy within this city?

Mr. REID. No; I'm prepared to go with the passage of the chairman's bill, and Congressman Fauntroy's bill, I'm prepared not to go any further than the President of the United States has gone, sir. Thank you, sir.

Mr. EDWARDS. Mr. Raven-Hansen. You've stated that you believe it would be constitutionally proper, although not necessarily appropriate or inappropriate, to provide for full representation by statute rather than by constitutional amendment. Would you also go so far as to say the same object could be obtained if the Supreme Court were to decide that the 1976 election was unconstitutional because it violated the one-man-one-vote rule?

Mr. RAVEN-HANSEN. You mean because the District of Columbia was not represented at that time?

Mr. EDWARDS. That's correct. Its citizens have all the attributes and all the burdens of citizenship, but they're not allowed to vote.

Mr. RAVEN-HANSEN. No, I would not.

Mr. EDWARDS. To your knowledge, is the equal suffrage proviso of article V, the only constitutional provision which is inamendable.

Mr. RAVEN-HANSEN. I'm not sure it states that in fact, sir.

Mr. EDWARDS. It very nearly does.

Mr. RAVEN-HANSEN. I think it is the only limitation on amendment. I would give the same construction Mr. Rauh gave it, and I think that scholars almost unanimously have given it, that it would tend to preserve the benefits of the great compromise. It is not intended to prohibit dilution of the vote of the States.

Mr. VOLKMER. May I address that?

Mr. EDWARDS. Yes, sir.

Mr. VOLKMER. In other words, that provision prohibits Congress from giving one State two Senators and another State three.

Mr. RAVEN-HANSEN. That's correct.

Mr. VOLKMER. But you're not saying article V prohibits Congress from giving voting representation to entities other than States.

Mr. RAVEN-HANSEN. Well, territories are a particular case. The Constitution has a status for them to have representation, that is, in the form of statehood.

But, of course, if they were admitted as a State, yes, they could have two Senators.

Mr. EDWARDS. Well, actually, a strict reading of this provision could prohibit the admission of additional States.

Mr. RAVEN-HANSEN. That's right. The reading was given by some people who would throw this up as a reason for not passing the resolution.

Mr. EDWARDS. Thus, we would be left with the original 13 States.

Mr. RAVEN-HANSEN. Apparently that hasn't worked.

Mr. VOLKMER. That ought to be stricken.

Mr. EDWARDS. Regardless of how outrageous or immoral then, the Constitution can be amended by two-thirds of each House, and three-fourths of the State legislatures. Is that also correct?

Mr. RAVEN-HANSEN. I think so.

Mr. EDWARDS. Mr. Volkmer.

Mr. VOLKMER. In this proposal—and you say scholars all agree on the question of sufferance and dilution—would it be advisable if not——

Mr. RAVEN-HANSEN. I don't think it would be advisable, because I don't think the arguments that have been made from that provision of article V deserve that much attention.

Mr. REID. We'd also run into another difficulty, and that is that it might raise questions of whether the amendment was notwithstanding other amendments—and you have a rule of interpretation of the last amendment, you know, controlling—so that I think it would be productive of more difficulty than it would serve any good purpose.

I think it's well here to remember that the framers developed the Constitution that we are still able to be governed by because of its capacity to grow and develop, you know, with the growth and change in the country.

The framers did not intend that the black people would vote, and the framers did not intend the women would vote, but fortunately we have moved forward and have increased participatory democracy.

And the States have been able to live with the fact that we have admitted more people into the Union and into the "Senate club."

Mr. EDWARDS. Ms. Davis.

Ms. DAVIS. Would a constitutional amendment providing for full representation preclude the District from becoming a State if it chooses to do so at some later date?

Mr. RAVEN-HANSEN. I haven't really considered that. I offhand can't think why it would. But it's subject to the plenary power of Congress under article I, section 8, clause 17, stating Congress will have exclusive jurisdiction in the District of Columbia, and I have not really considered it beyond that.

Ms. DAVIS. Professor Reid.

Mr. REID. I do not think so, Ms. Davis. I do not think it would be a problem. I think the language of this proposed amendment, both amendments, is such that for purposes of representation, for purposes of it, it is to be treated as a State, and I see that as being no bar to it becoming a State—if in fact, anyone at a later time thought it was desirable. That is the far distant future, and I hope it's very distant and very future.

Mr. EDWARDS. Mr. Starek.

Mr. STAREK. Yes, thank you, Mr. Chairman.

Mr. Raven-Hansen, I believe that you said earlier—and your arguments support this—that there is some thought that voting representation for the District of Columbia could be accomplished by statute, but you prefer the constitutional amendment. Is that right?

Mr. RAVEN-HANSEN. That's right.

Mr. STAREK. Am I stating what you said accurately?

Mr. RAVEN-HANSEN. Yes, sir.

Mr. STAREK. In that case, why would you want to go the constitutional amendment route rather than the much easier route of the statute?

Mr. RAVEN-HANSEN. Because there is no question that the theory set forth in my argument that I described to you today doesn't exactly leap at you from the face of the Constitution, and I think that we should, do have a consideration of consistency with its plain language and elegance in the evolution of the Constitution.

And for that reason, I think the constitutional amendment is preferable. I also am not prepared to say that the theory as set forth in my argument could command a majority of the present members of the Court.

Mr. STAREK. Well, thank you.

I'd like to check that with the clear and precise language in the Constitution. Certainly Professor Reid indicated he would prefer the language of House Joint Resolution 554 or 556.

Now, my reading of the difference in these two proposed joint resolutions is that 139 basically sets out which attributes of statehood would be awarded to a resident of the District of Columbia, whereas 554 does not specifically award those attributes. House Joint Resolution 554 does not say which ones are specifically awarded and which ones are not.

My question is, is it good drafting theory—to say specifically what attributes of statehood will be awarded to the District, or is it better to leave some not included? In effect, 554 does do that.

Mr. RAVEN-HANSEN. I don't agree that it leaves it unclear. The attributes it speaks to are: Representation in Congress, participation in the election of President and Vice President, and participation in the article V ratification process. It doesn't speak to any attributes under other sections of the Constitution.

Mr. STAREK. Professor Reid?

Mr. REID. Well, I think that the—as I tried to say in my written text—the language of 554 and 565 are more desirable because they do speak specifically of certain attributes. I think that is important in terms of facility in passing the resolution. And I think it also will help in judicial interpretation later.

In response—if I may, sir—to your earlier question about the constitutional route, I would like to suggest one reason why I prefer the constitional route, and that is that it would place voting representation of people of the District in a posture of permanency rather than resting upon the shifting tides of congressional will. And the sentence I like is: "A great idea has more permanency carved in the stone of the Constitution than written upon the quicksand of changing political moods."

Mr. STAREK. Thank you.

I'm concerned with some of the language in 554. Let me ask you gentlemen if you have given any thought to the fact that, since the District of Columbia does not have a legislature with a least numerous branch, how would qualification for voting be established?

Mr. REID. Well, I think the language of 554 and 565, and the provision that leaves Congress the power to delegate the rights of the people in the District of Columbia, is sufficiently descriptive to give Congress the necessary power that I was talking about, which it needs, to determine from time to time how to make voter representation in the District of Columbia most effective.

Mr. STAREK. And you don't see that in any direct conflict with article I, section 8, clause 17?

Mr. REID. No; I do not.

Mr. STAREK. I'm sorry.

Mr. RAVEN-HANSEN. I would agree with that, and there's another way to look at it. Some of the case law is quite clear that the District does have a State legislature, and that is Congress. And taking that interpretation, Congress is free to set the qualifications to vote.

Mr. STAREK. An interesting theory.

Mr. VOLKMER. Would the gentleman yield just a moment?

Mr. STAREK. Certainly.

Mr. VOLKMER. Also, the constitutional provisions for representation provide that for representation you have to have an electorate.

Mr. RAVEN-HANSEN. Pardon me.

Mr. VOLKMER. You have to have an electorate to have representation.

Mr. RAVEN-HANSEN. I'm not sure I understand you.

Mr. VOLKMER. You have to have qualifications.

Mr. RAVEN-HANSEN. Yes.

Mr. VOLKMER. You set the qualifications. It's a natural; one flows from another. Is that correct?

Mr. RAVEN-HANSEN. I think so.

Mr. REID. Yes, sir.

Mr. EDWARDS. Ms. Davis.

Ms. DAVIS. I would like to go back to Representative Thornton's statement. If Mr. Thornton's alternative is enacted, District of Columbia residents would be Maryland residents for the purposes of Federal elections; query whether they would be Maryland residents for the purposes of State income tax. Do you have any thoughts on that?

Mr. REID. No. To me this is such a novel idea that—in terms of our jurisprudence—that I don't know what it's parameters are. Never have we treated people separate and independent from the territory in which they lived. You see? And this is a break with that.

To what extent, then, would they purport to deal with the—would the Federal Government purport to deal with the residents of one State and the effect which they could have upon another State? To me it's just nonproductive. If the distinguished gentleman was not a Member of this august body, I would characterize his proposal differently, but it's mischievous so far as I am concerned.

Mr. RAVEN-HANSEN. I think it's academic. I'll put it that way, because I think that the principle we're discussing here, the consent of the governed, more or less requires that both District residents and the people of Maryland consent to such. I'm not talking in constitutional terms now, but in terms of simple politics and fairness. But if the scheme could be effectuated, then I don't know what the answer to your question is except that there are Federal enclaves now in the military installations, the residents of which are permitted to vote in State elections, and I don't believe they are subject to State taxation.

Mr. REID. But here again, Ms. Davis, that analogy is not true that Representative Thornton is trying to draw. In all of those situations the land was owned by the State and given to the Federal Government, and the Federal Government has given it back. And then, at that particular time, the question has been whether or not the Federal Government was taking the area subject to exclusive jurisdiction, qualified jurisdiction, or concurrent jurisdiction. And the enclave problem has produced a great deal of difficulty in this country in terms of the operation of State law, the operation of Federal law.

Well, you have a format by which Congress, in the supremacy clause, can deal with it. This is not that situation; this is an entirely new situation which, to me, is productive of great difficulty in our constitutional system.

Ms. DAVIS. That is all, Mr. Chairman.

Mr. EDWARDS. It is the considered opinion of you both that the subcommittee is on sound ground in its consideration of the proposed constitutional amendments now under study. Is that your testimony?

Mr. REID. Yes, sir. If it is not going to be considered as a kiss of death, I would like to congratulate the chairman and the committee.

Mr. RAVEN-HANSEN. I would certainly join Professor Reid's remarks.

Mr. EDWARDS. Thank you. We appreciate those sentiments, and we appreciate your great assistance to the subcommittee in the hearing here today.

Without objection, the statements for the record of Senator Edward M. Kennedy, Prof. Charles Alan Wright, the League of Women Voters, and the District of Columbia Advisory Neighborhood Commission 3–E, will be made part of the record.

[The statements referred to follow:]

STATEMENT BY HON. EDWARD M. KENNEDY, A U.S. SENATOR FROM THE STATE OF MASSACHUSETTS

Mr. Chairman, I thank you and the members of the Subcommittee on Constitutional and Civil Rights for the opportuuity to express my strong interest and commitment in achieving full voting representation in the Congress for the citizens of Washington, D.C.

Three-quarter of a million citizens who live on the doorstep of democracy do not have full voting representation.

The issue before us is one of basic equity. The members of this 95th Congress have an obligation to remedy this denial of civil rights.

I have on three occasions since 1971 offered constitutional amendments that would empower Washingtonians to have full voting representation in the Congress. On June 21st of this year, I introduced a resolution to amend the U.S. Constitution to provide full voting representation in Congress for the District of Columbia. S.J. Res. 65, the full voting resolution which I introduced is identical to Congressman Fauntroy's House Joint Resolution 139 and contains the following provisions:

First, citizens of the District of Columbia would elect two Senators and two Representatives in Congress.

Second, each Senator and Representative would be required to be a resident of the District of Columbia.

Third, each Senator and Representative would possess the same qualifications as to age and citizenship and have the same rights, privileges and obligations as other Senators and Representatives.

Fourth, a vacancy in the representation of the District of Columbia in the Senate or in the House of Representatives would be filled by a special election by the voters of the District.

Fifth, the amendment would have no effect on the provision in the twenty-third amendment for determining the number of electors for President and Vice President to be appointed for the District.

Sixth, Congress would have the power to implement the amendment by appropriate legislation.

Though the merits of the argument for District of Columbia representation in Congress are so well known—and so overwhelming—I believe it would still be useful for me to reiterate them again today. Time after time, the facts and arguments for District of Columbia representation have been set out in detail. The tragic history of 90 years of efforts to achieve this goal is well known.

Efforts to obtain voting representation were thwarted in March 1971, on the floor of the Senate. At that time, I had brought before the Senate a congressional representation resolution to be considered as part of the 18-year-old voting amendment. The timing seemed especially significaut because the District of Columbia was preparing to choose a nonvoting Delegate to the House of Representatives on the very next day. I chose the 18-year-old vote amendment as a suitable vehicle to bring real democracy to the people of Washington, because it had been demonstrated all too forcefully in the past, that the District of Columbia proposal standing alone would not be reported by the Senate Judiciary Committee, or by the House Rules Committee. The endless arguments that the District of Columbia measure would kill the 18-year-old vote amendment were baseless. For the attention of the Nation was firmly fixed upon the Senate's efforts to extend the franchise for millions of young Americans throughout the Nation. Extending full voting rights to the 760,000 residents of our Capital City was clearly an appropriate direction in which we could have

moved. Each State would have been required to ratify the two amendments separately.

With the overwhelming support of 86 Senators, the 18-year-old vote amendment was in no way jeopardized by the District of Columbia measure. Yet, 68 Senators voted to scuttle my proposal to add the District of Colnmbia vote to the 18-year-old provision. And so it is, that once again, the citizens of the District of Columbia were denied the chance to exercise the most fundamental expression of democracy—the right to choose their own representation in the National Legislature.

To continue that delay is not only inequitable but it can mean a different world for every resident of Washington.

As I introduce this resolution in this 95th Congress and urge my colleagues to bring the congressional vote to the Capitol, I would like to rebut a number of argnments that have been made against this worthwhile proposal:

First, overhanging the entire debate is the specter of racism and partisan politics. I raise these two arguments only to rebut them, because they cannot stand the light of day. No Senator—whatever party—would vote against the citizens of the District for these reasons.

Second, it is said that the District of Colnmbia amendment deserves careful study. When I first introduced this measure in 1971, I described in detail the history of efforts to achieve voting representation in Congress for the District of Columbia.

The first constitutional amendment to win this goal was introduced in Congress in 1888. Since that date, hundreds of different amendments have been introduced in Congress, and dozens of hearings have been held by Senate and House committees over the years. The scenario is always the same. Inevitably, the hearings generate overwhelming snpport for the District of Columbia amendment. And, jnst as inevitably, every effort meets with uniform frustration and defeat.

At the beginning of June 1970, the Senate Subcommittee on Constitutional Amendments held hearings on the District of Columbia amendment. Under the leadership of Senator Birch Bayh, one of the most distinguished and long-standing advocates of the cause of District of Columbia representation, the hearings again developed virtnally unanimous support for the District of Columbia amendment. Over the period of the next several weeks, because of its inability to obtain a qnorum, the subcommittee was continuously thwarted in its effort to report the amendment favorably. Finally, when the subcommittee was able to muster a qnorum at the end of July, Senator Bayh's motion to bring up the District of Columbia amendment for debate and action was blocked by the objection of several members of the subcommittee, and the amendment was effectively killed for that Congress.

On the fact of this dismal record, unbroken since the District of Columbia amendment was first proposed in the 19th century, can we really maintain that it needs more debate? I submit that 90 years is long enough.

Third, it is said, only 6 years ago Congress gave the District a nonvoting Delegate and this is enongh of an accomplishment for the time being. It is nothing of the sort. The nonvoting Delegate is not an end in itself. The only real value it has is as an interim measnre, a half-way house to tide us over the brief period while a constitutional amendment for full representation is enacted by Congress and ratified by the States.

Now that the nonvoting Delegate is a reality, we must fix our attention on the true goal. We must adopt a constitutional amendment for full voting representation for the District, and submit it to the States for ratification. There could be no more ideal result than for the District to have active voice and benefit of the nonvoting Delegate as a forerunner in the present Congress, to lay the foundation for the voting Senators and Congressmen who will come after him.

The one thing we cannot do is to allow the status of the interim Delegate to deteriorate into that of a permanent nonvoting representative. At last, we have a good chance of success, if only we keep our sights high, and do not relax our effort before the job is done.

Fourth, some opponents of representation for the District of Columbia claim that the amendment would treat the District as a State. They say that the District is not a State but a city, smaller than at least eight other cities in the Nation, and that there is no greater reason for this city to be represented in Congress than larger cities which are denied the right. This argument ignores

the obvious fact that other American cities are political subdivisions of States, which are already represented in both the Senate and the House of Representatives.

Moreover, for years, the District of Columbia has traditionally been treated as a State in virtually every major Federal grant legislation. In program after program, in statute after statute, all of us in Congress are familiar with the well-known clause: "For the purposes of this legislation, the term 'State' shall include the District of Columbia."

This argument against District of Columbia representation is heard most frequently in relation to the Senate. The objection is raised that only States should be represented in the Senate. I share the strong concern of the Members of this body for the traditions and prerogatives of the Senate, but I feel a stronger concern against the injustice of denying a substantial group in our population the right to participate in making the laws by which they are governed. Vital legislation affecting the lives of all the citizens in the Nation is debated in every session of the Senate. Until the people of the District are represented in the Senate as well as in the House, they will not have the right to true self-government that is the birthright of every American citizen.

In addition, by accepting two Senators for the District of Columbia as part of the amendment, the Senate itself will be demonstrating its good faith to the House. Too often, the Senate has been generous in proposing representation in the House for the District of Columbia, but reluctant to invite the District into the well of the Senate itself.

Can we really maintain that the citizens of the District are doomed to a perpetual colonial status, to denial of the most basic right in civilized society—the right that is preservative of all other rights, the right of self-government? Surely this is too high a price to pay for preserving the tradition and prerogatives of the Senate.

Nothing in our Constitution or its history supports the interpretation that the District of Columbia was intended to be denied representaion in both the Senate and the House. Indeed, in the Federalist. No. 43, James Madison, one of the principal architects of the Constitution, wrote that the prospective inhabitants of the Federal city "will have had their voice in the election of the Government which is to exercise authority over them." Clearly Madison was assuming that the citizens of the Nation's Capital would be represented in Congress.

Fifth, another, even less persuasive, objection to District of Columbia representation in Congress rests on the provision in Article V of the Constitution, which declares that—

> "No State, without its consent, shall be deprived of its equal suffrage in the Senate."

It is far too late in our history to argue that the admission of the District of Columbia to representation in Congress would deprive any State of its "equal suffrage in the Senate." In light of the history of the Constitution and the precedents under it, the meaning of Article V is clear—no single State may be given a larger number of Senators than any other State.

This was the essence of the Federal compromise at the Constitutional Convention in 1787. It has guided us for 200 years, and it is intended to endure throughout our history. This is all that Article means, and all that it requires.

In addition, Article V has never been read as prohibiting the representation of new States in the Senate, even though—obviously—the admission of a new State dilutes the voice and power of the existing States in the Senate. Indeed, since the ratification of the Constitution by the original 13 States, 37 new States have been admitted to the Union. As a result, the power of the original 13 States in the Senate has been diluted nearly fourfold, from 2 to 26 to 2 to 100. Yet, no one has ever argued that any of the original 13 States has been deprived of its equal suffrage in the Senate.

The principle is clear. So long as the District of Columbia is represented in the Senate no more advantageously than any State, it cannot be said that representation for the District deprives any States of its equal suffrage in the Senate. Each State will still have two votes in the Senate, and each State will still have the same proportionate vote as any other State.

As I have attempted to show, the arguments against full voting representation in Congress for the District of Columbia have no merit, especially in light of the grave injustice that is being perpetuated against the citizens of the District. Today, the United States stands virtually along among the democratic nations

of the world in denying representative government to the people of its Capital City. The citizens of Washington deserve to share in the right of self-government the birthright of every American citizen. I urge the Senate to establish this symbol of our commitment to our heritage and to the cause of freedom, equality, and justice for all our citizens.

In 1977, this country guided by a new President asserted moral leadership in the world-wide community. Governments from Russia to Rhodesia were challenged to begin seriously thinking about the denial of basic human rights to citizens that exist within their borders.

In South America, Eastern Europe, Asia and South Africa, the Administration backed by Congress not only made a pledge to human rights, but also took affirmative steps to help secure the same.

It is encumbent on us to make certain that this country's resumption as a world leader for human rights begins at home. Nowhere in America should the principles of democracy be more firmly established than in the nation's capitol. In Washington today, however, democracy is weakest where it should be strongest. The sad truth is that the District of Columbia is still the last bastion of taxation without representation in the United States.

Mr. Chairman, it is my firm hope that this new Congress will bring an end to the shameful denial of the fundamental right to vote for the residents of Washington, D.C. and provide a positive example to other nations where basic human rights are still being denied.

STATEMENT OF CHARLES ALAN WRIGHT

My name is Charles Alan Wright. I am Charles T. McCormick, Professor of Law at The University of Texas. For more than 25 years I have been a law teacher, at the University of Minnesota from 1950 to 1955 and at The University of Texas since that time. I was a visiting professor at the University of Pennsylvania Law School in 1959–60, at the Harvard Law Schol in 1964–65, and at the Yale Law School in 1968–69. I regularly teach courses in Federal Courts and in Constitutional Law and offer a seminar on the Supreme Court. I have written extensively on constitutional law and on other legal matters.

At the request of the staff of the Subcommittee on Civil and Constitutional Rights, I have examined House Joint Resolutions 139, 392, and 554. I have also read the committee report and the floor debate in the 94th Congress on what was then H.J. Res. 280.

I have no doubt that if the citizens of the District of Columbia are to be given representation in Congress, a constitutional amendment will be required. Representation could, of course, be achieved by ceding the District back to Maryland, but this would completely destroy the unique character of the District, a character that was contemplated by the Framers and that the country has come to accept. Both the precedent that was set when a portion of the District was ceded back to Virginia and the implications of Article IV, § 3, persuade me that the consent of the Maryland legislature would be required, and I would be troubled also on how to read the Twenty-Third Amendment if legislation were to wipe out the District.

Nor can I take seriously the possibility that the citizens of the District could be authorized by statute to vote in Maryland while remaining citizens of the District for all other purposes. It would be difficult—indeed, I think impossible—to reconcile this with the language of Article 1, § 8, giving Congress power "To exercise exclusive Legislation in all Cases whatsoever, over such District" or with the provision of § 2 of the Fourteenth Amendment that "[r]epresentatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State * * *." The fact that citizens of the District apparently voted in Maryland in the 1800 election is not enough to overcome the constitutional provisions I have cited, the long practice to the contrary since 1800, and the acceptance of the present practice in the Constitution by the adoption of the Twenty-Third Amendment.

House Joint Resolution 554 differs in two significant respects from H.J. Res. 139 and H.J. Res. 392. First, it would repeal the Twenty-Third Amendment and give the District of Columbia the representation in the Electoral College to which its population would entitle it if it were a state, and apparently would give the District a voice in the ratification of consitutional amendments, though it is unclear how this would be exercised. The other two resolutions preserve in terms the limited representation in the Electoral College that the 1961 amendment pro-

vides. Secoad, H.J. Res. 554 provides oaiy that for certain stated purposes the District "shaii be treated as though it were a State," whiie the other two resoiutions spell out what the District is being given.

Whether the Tweaty-Third Amendment should be retained or repeaied seems to be wholly a question of policy, rather than of coustitutionai iaw. If the couatry should agree to amead the Constitution it may specify, one way or the other, the extent to which the District is to be represented in the Electoral Coiiege aad no coastitutionai problem is presented.

On the other point, however, it seems to me that as a matter of drafting Resoiutions 139 aad 392 are decidedly preferabie to 554. Aithough the iegisiative history wiii be ciear, aad the risk of any compiication arising is minimai, it seems to me ciearly desirabie that a constitutional ameadment spell out what it is doing rather than accompiishing this by indirection and introducing the anomaiy that the District is to be "treated as though it were a State" for some purposes but not for others.

As between Resolutioas 139 and 392 the oaiy difference is that the latter makes provision for iiiiing vacancics by appointment if at some future time Congress should aiiow the District to have its own elected legisiature and executive. The former does not, and if it were adopted there would aiways be vacancies in the District's representation in Congress until an ciection could be held if a Representative or Senator from the District siiouid die or resign. I see no constitutionai issue in the choice between these two resolutions. As a matter of policy, it would seem desirabie, and consisteat with the geacral purposes of all of these resoiutioas, to provide a mechanism for coatinuous representation, such as is authorized for the states in terms of Senate seats by the Seventeenth Auendment, but even that provisioa is permissive oniy, there is uo corresponding provision for Representatives in Article 1, § 2, and unless there is a significant possibiiity that Congress wiii at some poiat aiiow self-government to the District the finai six iines of § 2 of H.J. Res. 392 will be surpiusage.

Aa unsigned memorandum of August 3, 1977, entitied "Hearing Issues in D.C. Represeatatioa," with which I have been provided by the Subcommittee's staff asserts that H.J. Res. 554 would give the people of the District the power to set the qualifications for voters. This seems doubtful to me. The language "and as shall be provided by the Congress," in § 2 of that resolution seems to me to preserve the veto power Coagress would have under the other two resolutions by the "exciusive Legislation" provision of Article 1, § 8. In any event, there may be an advantage in reserving to Congress the power to set voter qualifications. The Fifteenth, Nineteenth, and Twenty-Sixth Amendments aii speak of "the United States or by any State." It is incouceivable that the District would disenfranchise voters on the basis of race, sex, or being only 18, but so iong as Congress is settiag the quaiifications it is clear that these amendments would be applicable. This would be far from clear if the District, which is not a state, were empowered to act on its own.

I do not think that the obsolete provision of Article 1, §4, would prevent Congress from prescribing the place where Senators from the District are to be chosen. That provision speaks to the relation between Congress and the States. Once again the District is not a state, and Article 1, § 8, gives Congress ample power to make regulations for the District that it could not make for states.

The oniy significant constitutionai issue posed by any of these resolutions is whether ratification by aii 50 states would be required in view of the finai clause of Article V. On this issue there is literally no law. Aithough the Nineteenth Amendment was attacked on the ground that a state that had not ratified that amendment would be deprived of its equal representation in the Senate because its Senators would be persons not of its own choosing, since women would participate in the choice, the Supreme Court thought this argument not worth even mentioning in its opinion sustaining that amendment. *Leser* v. *Garnet*, 258 U.S. 130 (1922). So far as I know that is the only case in which any contention has been made based on the "equal Suffrage" clause of Article V.

In the absence of any relevant case iaw, aii one can do is attempt an informed prediction. My prediction is that any challenge to these proposed amendments based on the "equal Suffrage" clause would fail. It seems to me that the clear purpose of that clause was to ensure that the Great Compromise would not be undone and that representation in the Senate would not be put on the basis of population. That purpose is not compromised by allowing the District to have two Senators anymore than it is when a new state is admitted. I understand that a

reasonable argument for a contrary position can be made, but I cannot believe it would prevail.

I have endeavored to limit myself in this statement to questions of constitutional law that have been posed about these proposed amendments. Whether it is desirable as a matter of policy to give the District of Columbia representation in Congress or to preserve its present status is a matter on which I express no opinion.

LEAGUE OF WOMEN VOTERS OF THE DISTRICT OF COLUMBIA,
Washington, D.C., September 16, 1977.

Hon. DON EDWARDS,
Chairman, Subcommittee on Civil and Constitutional Rights, Committee on the Judiciary, House of Representatives, Washington, D.C.

DEAR MR. EDWARDS: May we request that the enclosed statement from the League of Women Voters of the District of Columbia supporting House Joint Resolutions to provide the District of Columbia with full voting representation in the U.S. Congress be made part of the record of the Hearings now in progress before your Subcommittee on Civil and Constitutional Rights?

Sincerely yours,

ELLYN W. SWANSON, *President.*

Enclosure.

LEAGUE OF WOMEN VOTERS OF THE DISTRICT OF COLUMBIA,
Washington, D.C., September 16, 1977.

Hon. DON EDWARDS,
Chairman, Subcommittee on Civil and Constitutional Rights, Committee on the Judiciary, House of Representatives, Washington, D.C.

DEAR MR. EDWARDS: Enclosed is a copy of the statement in support of full voting representation in Congress for the District of Columbia which has been submitted for the record by the League of Women Voters of the District of Columbia.

We are very pleased that Mrs. Ruth Clusen, President of the League of Women Voters of the United States will be testifying at the Judiciary Subcommittee Hearings on September 21 in behalf of League members throughout the country.

Sincerely yours,

ELLYN W. SWANSON, *President.*

Enclosure.

STATEMENT OF THE LEAGUE OF WOMEN VOTERS OF THE DISTRICT OF COLUMBIA ON D.C. REPRESENTATION IN CONGRESS

As President Carter has said, "I have no new dream to set forth today but rather urge a fresh faith in their old dreams."

"We hold these truths of be self-evident, that all Men are created equal, that they are endowed by their Creator with certain inallenable rights, that among these are Life, Liberty and the Pursuit of Happiness—that to secure these Rights, Governments are instituted among Men deriving their just powers from the Consent of the Governed. . . ."

The Declaration of Independence continues to assert that the Right of Representation in the Legislature is an "inestimable" right. But Americans residing in the District of Columbia are governed without their consent, are denied their inestimable right.

Our country is a land "of the people, by the people, and for the people". But Americans living in the District of Columbia are denied voting representation in Congress.

"Taxation without Representation is Tyranny" rang true in the 1770s. But in 1977, Americans living in the District of Columbia pay their full share of federal taxes and are denied voting representation in Congress.

Three-quarters of a million Americans are disenfranchised because our home city is the capital of our democratic nation.

The League of Women Voters of the District of Columbia appreciates the opportunity to submit this statement supporting House Joint Resolutions providing for a constitutional amendment whereby D.C. citizens may gain full voting representation in both Houses of Congress.

In our view, full voting representation for the District of Columbia means certain things which are catalogued briefly below:

First, full voting representation for the District of Columbia is in accordance with the democratic principles of our system of government and our evolving political tradition.

It means that Americans living in the Nation's Capital would regain a franchise they once held in the early days of this nation.

It means that the American taxpayers resident in the District would have voting voices in the federal body which makes the laws governing all Americans. (By the 1970 census, D.C. has a population larger than that of each of 10 states).

With representation in both the Senate and the House, D.C. citizens would have an equitable voting voice in areas of vital national interest such as treaties, appointment of high officials, and revenue matters, and in areas of local concern such as appointment of our local judges, appropriation of our budget, and Congress's power to veto our legislation.

The tradition of the Federal District to serve as the seat of the Federal Government would continue.

Americans moving into the nation's capital would no longer lose their full franchise as Americans.

On the other hand, full voting representation does not mean a number of things, which also should be discussed:

It does not mean that there is a Constitutional contradiction; the Constitution does not forbid such representation for the District of Columbia.

It does not conflict with Article V of the Constitution, which says that ". . . no state, without its consent, shall be deprived of equal representation in the Senate". Each state would still maintain its same standing vis-a-vis other states, as has happened with the admission of each new state through the years.

Voting representation for D.C. in the House does not necessarily reduce the power of the states in the House. Such power has always been shared by addition of new states to the Union. Also, representation in the House is adjusted after each census, and the House can increase its size if it so chooses.

Full voting representation would *not* make D.C. a state.

Representation in Congress for D.C. is unrelated to "home rule", a portion of which was granted to the District by the 93rd Congress. Representation is a right granted to American citizens to have a voice in the legislative which taxes them, drafts their citizens into the military forces, and approves treaties that affect American citizens regardless of where they live.

Representation for D.C. does not prejudge the question of representation for U.S. territories and the Commonwealth of Puerto Rico. These are separate and separable matters. The District of Columbia is not a territory; it is a unique entity mandated by the Constitution, its area was part of the original thirteen colonies, and its residents have always been taxpaying American citizens.

In sum, full voting representation for the District of Columbia is in accordance with the democratic principles expressed in the Declaration of Independence, written into the Constitution, and enlarged in several amendments enfranchising black men, all women and eighteen year-olds. While these latter inclusions were not in the scope of thinking of the founders of our nation, they are part of an evolving political tradition. Conversely, we here are asking for a franchise which apparently *was* envisioned by the writers of the Constitution but omitted in the press of concerns of constituencies already in existence.

We are asking for an amendment in the spirit of the Constitution, not overturning the original concept of a capital city. Generations of native Washingtonians have a long tradition of pride in serving their nation's needs in its bureaucracy, and as hosts to other citizens who come as tourists or to petition their government.

We also ask for this amendment for the sake of those citizens who come to serve their government, or who are brought here by business interests and are shocked to find they have lost the rights of Congressional representation they believed to be their right as Americans. We ask for this amendment for the sake of our image in the world, that our country might not be called cynical and hypocritical, denying its capital district the rights for which we press in other countries.

Thus, the D.C. League of Women Voters emphatically supports full voting representation for D.C., as we have for over 50 years. Nothing has changed our conviction that such representation is just and right. We are pleased that both

the Republican and Democratic party platforms support this goal, and we hope that the goal may become a reality through the principled action of this Congress. We applaud the efficiency of the new resolutions embracing in one package D.C.'s representation in Congress, election of the President and Vice President, and ratification of future amendments to the Constitution, and repealing the discriminatory, unequal 23rd Amendment.

ADVISORY NEIGHBORHOOD COMMISSION 3E,
Washington, D.C., September 20, 1977.

Hon. DON EDWARDS,
Chairman, Subcommittee on Civil and Constitutional Rights, Committee on the Judiciary, U.S. House of Representatives, Washington, D.C.

(Attention Ivy L. Davis, Esq., Assistant Counsel)

DEAR MR. CHAIRMAN: Enclosed is the statement of Advisory Neighborhod Commission 3E of the District of Columbia concerning full voter representation for the residents of the District of Columbia. The Commission would appreciate your having our statement made part of the official record of these hearings.

I was fortunate enough to be able to attend last week's hearing, as well as the one on July 25, and was gratified by the kinds of testimony I heard made on our City's behalf. I do hope that you as Chairman of this Committee can assure that these hearings will culminate in a floor vote during this session of the 95th Congress. You'll have an eager, if voiceless, audience, I assure you.

Sincerely yours,

CAROL CURRIE GIDLEY,
Chairperson, ANC 3E.

STATEMENT OF ADVISORY NEIGHBORHOOD COMMISSION 3E OF THE DISTRICT OF COLUMBIA

Chairman Edwards, members of the subcommittee: Advisory Neighborhood Commission 3E of the Government of the District of Columbia is pleased to submit to you a statement of support for full voter representation for the citizens of the District of Columbia. We appreciate the opportunity you have provided us to make this statement on the one issue which is of such vital interest to us all. We would appreciate having the statement made a part of the official record, as well. The Commission hopes and expects that at the conclusion of these hearings, the matter will be swiftly brought to the Floors of both Houses of the United States Congress for vote and passage.

Advisory Neighborhood Commission 3E is the elected body of officials who serve the 10,000 citizens of the American University Park and Friendship Heights area in Ward Three. The Commissioners have taken an official vote in total support of full voter representation for the citizens of Washington, and this statement's purpose is to notify the Subcommittee on Civil and Constitutional Rights, Committee on the Judiciary, the U.S. Congress.

Members of the Commission have attended the hearings held on August 3 and September 14 on this matter, and have been impressed and gratified by the testimony offered by and on behalf of the citizens of the District of Columbia in support of our right to voting representation in the United States Congress. No one seems to oppose this quest by Washingtonians of a right which all other Americans now possess. Still, there were questions raised by Members of the Subcommittee, questions which disturb.

The issue before this Subcommittee—and ultimately, before the entire Congress—is not a question of "Retrocession" to Maryland or any other state. It is not a question of whether or not the citizens of the entire Nation would actually "allow" the citizens of the District of Columbia to vote. It is not a question of whether other states would have to give up a "portion of their sovereignty" if Washington were to have this right. The issue is a simple question of justice. An American right. A holy responsibility. It is a question of whether this 95th Congress plans to assume its leadership role and lead the total effort to give Washington, D.C. full voter representation in both Houses of the Congress. In this Commission's opinion, it is the responsibility of each and every Member of Congress to go home to his or her citizens and tell them that the citizens of the District of Columbia indeed do not have the right that they themselves have, and that this is the very reason why that Congressman, Congresswoman or

Senator will vote a resounding AYE to full voter representation for the citizens of the District of Columbia in the Congress. Because there is no reason to deny it.

Some have said that we're the last colony. Others have said that we're really the last plantation. Still others have said that Congress is afraid to let go its reins and permit Washingtou to speak for itself. There may be some truth in all of this. Regardless, this Commission believes that the basic, fundamental right to voting representation is the true and only issue iuvolved here, aud that that right is being denied the 720,000 citizens of our City.

The citizens of Washington look to this, the 95th Congress, and to this Subcommittee especially, to change this shameful situation. We insist on full voter representatiou for all our citizens and we insist that this Subcommittee and this Congress assume the leadership in this action by giving us what is our right. As America begins her 201st year with full voting rights, let her Capital, Washington, D.C., begin her first.

Respectfully submitted,

CAROL CURRIE GIDLEY, *Chairperson.*

THE METROPOLITAN WASHINGTON BOARD OF TRADE,
Washington, D.C., September 27, 1977.

Hon. DON EDWARDS, CHAIRMAN,
Subcommittee on Civil & Constitutional Rights, Committee on the Judiciary, U.S. House of Representatives, Washington, D.C.

MY DEAR CHAIRMAN: I wish to take this opportunity to express my thanks to you for permitting me to testify before your Committee last week on the matter of voting represeutation in the Congress of the United States. We feel very strongly about this matter and hope that you and your colleagues are successful in getting the necessary votes to have it passed from the House over to the Senate.

During the hearings Counsel for the Coumittee asked that we supply information on a specific point in my testimony in which I said that the citizens of the District of Columbia pay more Federal taxes thau the citizens of 15 other states. Counsel asked which those states were and they are, in descending order, as follows:

District of Columbia	$386,000	Nevada	$269,000
Hawaii	379,000	Montana	213,000
Rhode Island	373,000	Idaho	197,000
Utah	307,000	South Dakota	156,000
New Hampshire	303,000	Alaska	150,000
Delaware	299,000	Vermont	149,000
New Mexico	296,000	North Dakota	149,000
Maine	292,000	Wyoming	124,000

Another iuteresting fact is that there are only 6 states which pay a higher Federal individual income tax per capita thau the residents of the District of Columbia. These are:

Connecticut
Florida
Nevada
Delaware
New Jersey
Illinois

I trust that this information is helpful to you in your deliberatious.

Sincerely,

CLARENCE A. ARATA.

The subcommittee will adjourn, to meet again October 6.

Mr. EDWARDS.

Thank you very much.

[Whereupon, at 3:50 p.m., the hearing was adjourned, to reconvene on Thursday, October 6, 1977.]

REPRESENTATION FOR THE DISTRICT OF COLUMBIA

THURSDAY, OCTOBER 6, 1977

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 9:30 a.m. in room 2237, Rayburn House Office Building, the Honorable Don Edwards (chairman of the subcommittee) presiding.

Present: Representatives Edwards, Drinan, and Butler, and Delegate Walter E. Fauntroy and assistant counsels to the subcommittee.

Staff present: Ivy L. Davis, counsel, and Roscoe B. Starek III, associate counsel.

Mr. EDWARDS. The subcommittee will come to order. Today marks the second day of constitutional analysis and the final day in a series of hearings before this subcommittee to consider House Joint Resolutions 139, 142, 392, 554, and 565. These resolutions would amend the Constitution by giving to the residents of the District full voting representation in both Chambers of Congress.

The hearings on these resolutions have been enlightening. As my distinguished colleagues have noted, the issue has been frequently discussed over the years but the witnesses who have come before this subcommittee have managed to enrich this old theme with new thoughts, making these hearings both stimulating and informative.

We are fortunate in having with us this morning a distinguished panel of constitutional experts. They include Prof. Arthur S. Miller, Prof. Stephen A. Saltzburg, and Assistant Attorney General Patricia M. Wald.

We will first hear from Prof. Arthur S. Miller, a long-term friend of the committee. Professor Miller is a distinguished professor of constitutional law and a faculty member of the National Law Center of George Washington University. He is the author of numerous publications and has served as consultant to the Separation of Powers Subcommittee, formerly chaired by Senator Sam Ervin and as chief consultant to the Senate Watergate Committee.

Professor Miller, you may proceed with your statement.

TESTIMONY OF PROF. ARTHUR S. MILLER, NATIONAL LAW CENTER, GEORGE WASHINGTON UNIVERSITY

Mr. MILLER. Thank you, sir. I have a very brief statement. I would like to read most of it, if not all of it, and then I will hold myself open to whatever questions the subcommittee may have.

Mr. EDWARDS. Very good. Without objection, all of the statement will be made a part of the record. And the witness may proceed.

Mr. MILLER. I appreciate very much this opportunity to appear before this subcommittee. I think the question is an important one. I am sure the subcommittee is fully aware of Article I, Section 8, clause 17 of the Constitution. I won't repeat at this time about the power of Congress having exclusive jurisdiction over the District of Columbia.

I am told by the most authoritative analysis of the Constitution. the Library of Congress Annotated Constitution, that the Constitutional Convention Court was "moved to provide for the creation of a site in which to locate the capital of the Nation, completely removed from the control of any State, because of the humiliation suffered by the Continental Congress on June 21, 1783."

On that date 80 unpaid soldiers marched on Congress when it was sitting in Philadelphia, threatened and verbally abused the Members, and caused Congress to flee the city when neither municipal nor State authorities would protect the Members. It was, therefore, considered indispensable that there be a separate seat of government.

What was true in 1783 surely is not true two centuries later. Surely Congress has the power and the wherewithal to protect itself should that become necessary. It seems to me to be beyond argument that the original need for a separate seat of the National Government has long since vanished.

If that be so, then the question becomes what should be done about it. It is my considered opinion, Mr. Chairman, that the District of Columbia constitutionally is analogous to territories of the United States; and, therefore, the Congress, by a simple statute, could make it the 51st State.

This would provide for the election of two Senators and at least one Representative.

I see no reason whatsoever why this need be done by constitutional amendment, even though such a statute would make the 23d amendment a dead letter.

I might interpolate here, Mr. Chairman, that I am quite aware of the contrary opinion of others, including my friend Charles Wright of the University of Texas, and I would be happy to comment on his letter if you wish.

The Constitution is entirely clear in that Congress has plenary power to do whatever it wishes with respect to the District, save, of course, for the need for not violating the express provisions of the Constitution, such as the Bill of Rights.

The District is treated the same as a State insofar as constitutional rights are concerned, and insofar as the diversity jurisdiction of the Federal courts is concerned. The movement since the founding of the Republic has been toward treating the District much the same as a State.

I am also aware, Mr. Chairman, of House Report No. 94–714 in which it was stated that "a constitutional amendment is essential" for citizens of the District to have voting representation in Congress.

I simply do not believe that that reflects an accurate statement of the power of Congress. As I read the Constitution, there is no limita-

tion on the power of Congress with respect to the District of Columbia.

After all, Congress did cede a part of the District to Virginia in 1846 with the concurrence of the State of Virginia. I simply do not read the Constitution in any other way than saying that Congress does have this power should it choose to exercise it.

Another contemporary example might be Puerto Rico, which is a commonwealth, whatever that might mean. I don't know anyone who knows what it means; Congress could make Puerto Rico a State if it should so desire.

The point, it seems to me, is relatively simple, and perhaps it's because I am a simple country lawyer, Mr. Chairman. If Congress can make Alaska and Hawaii States, from territories, as it did, then I perceive no obstacle whatsoever to making the District of Columbia a State, if it should so desire.

I know of no limitation on the power of Congress. Article IV is certainly not a limitation.

I have read the "Issues Memorandum" dated August 3. I do not understand the argument about the Federal Government having to rely on the District for police, et cetera, protection or duplicate nearly identical services. That doesn't make sense to me.

The Federal Government does so in other areas, it is my understanding. And I think it is a fact that title to about one-fourth of the land area of this country rests in the Federal Government. I don't think it is the fact that there are separate police, fire, and so forth, services for that property. I don't think the Federal courthouse in New York City gets separate police and fire protection.

To interpret the Constitution the way that the first paragraph of that memorandum does—alluding to the intention of the framers—is to forget the plain meaning of the Constitution that the Congress has complete power over the District of Columbia. I think you should also bear in mind article VI about the principle of Federal supremacy and I think also you could bear in mind, Mr. Chairman, if I might interpolate just a moment, what Mr. Justice Holmes said in *Missouri* v. *Holland* and Mr. Chief Justice Hughes said in the *Blaisdell* case in 1934, both of whom said that you do not interpret the Constitution in the 20th century by what the framers might have meant, if indeed, you can determine what the framers might have meant.

I don't think you can determine it. I think the reference to the history is a delusion.

There may be reasons of a political nature which would lead the Congress to keep the District in its present status. I don't prefer to allude to those. I would be happy to give a statement on whether I think the District, in my judgment, should be the 51st State. All I'm saying, Mr. Chairman, is that Congress has the power to go either way.

It can do it by statute and it can do it by amendment. That's up to the Congress. I don't see any possible way that this could be challenged.

Thank you very much.

Mr. EDWARDS. Thank you very much, Professor Miller.

[The prepared statement of Prof. Arthur S. Miller follows:]

STATEMENT BY PROF. ARTHUR S. MILLER, NATIONAL LAW CENTER, GEORGE WASHINGTON UNIVERSITY

I appreciate the opportunity to appear before this Subcommittee to discuss the important question of whether the District of Columbia should be accorded full voting representation in Congress. You are, of course, aware of the constitutional provision with respect to the District, as set forth in Article I, Section 8, Clause 17; it reads as follows:

"Congress shall have power . . . to exercise exclusive jurisdiction in all cases whatsoever over such District (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress become the seat of Government of the United States and to exercise like authority over all places purchased, by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings."

According to the most authoritative analysis of the Constitution—the Library of Congress's annotated Constitution (Senate Document No. 92–82)—the Constitutional Convention "was moved to provide for the creation of a site in which to locate the capital of the nation, completely removed from the control of any state, because of the humiliation suffered by the Continental Congress on June 21st, 1783." On that date, eighty unpaid soldiers marched on Congress when it was sitting in Philadelphia, threatened and verbally abused the members, and caused Congress to flee the city when neither municipal nor state authorities would protect the members. It was, therefore, considered indispensable that there be a separate seat of government.

What was true in 1783 surely is not true two centuries later. Surely Congress has the power and the wherewithal to protect itself, should that become necessary. It seems to me beyond argument that the original need for a separate seat of the national government has long since vanished. If that be so, then the question becomes what should be done about it? It is my considered opinion that the District of Columbia constitutionally is analogous to territories of the United States; and, therefore, that Congress, by a simple statute, could make it the fifty-first state. This would provide for the election of two senators and at least one representative from the District.

I see no reason whatsoever why this need be done by constitutional amendment, even though such a statute would make the Twenty-third Amendment a dead letter.

The Constitution is entirely clear in that Congress has plenary power to do whatever it wishes with respect to the District, save, of course, the need for not violating the express provisions of the Constitution, such as the Bill of Rights. The District is treated the same as a state insofar as constitutional rights are concerned and insofar as the diversity jurisdiction of the federal courts is concerned. The movement since the founding of the Republic has been toward treating the District much the same as a state.

I am quite aware of House Report No. 94–714 in which it is stated that "a constitutional amendment is essential" for citizens of the District to have voting representation in Congress. I don't believe that reflects an accurate statement of the power of Congress. As I read the Constitution, there is no limitation on the power of Congress with respect to the District of Columbia. After all, Congress ceded a part of the District to Virginia in 1846; that, of course, was with the concurrence of Virginia. I simply do not read the Constitution in any other way than saying that Congress does have this power should it choose to exercise it. Let me cite another contemporary example. Should Congress wish to make Puerto Rico a state, it may do so, even though it is my understanding that the technical status of Puerto Rico is that of a "commonwealth." I don't know what the term "commonwealth" means.

My point is relatively simple. If Congress can make Alaska and Hawaii states, as it did, then I perceive no obstacle whatsoever to making the District of Columbia a state, if it should so desire. In this connection, I know of no limitation on the power of Congress. See also Article IV of the Constitution.

I have read the "Issues Memorandum" dated August 3rd. I simply do not understand the argument about the federal government having to rely on the District for police, etc., protection or duplicate nearly identical services. So what? The federal government does so in other areas of the United States. Is it not a fact that title to about one-fourth of the land area of the United States rests in the federal goevrnment? Can it be established that there are separate

police, fire, etc., services for this property? The answer, of course, is no. To take only one example, I do not think it is a fact that the federal court house and other federally owned buildings in New York City have separate police, fire, highway, etc., services.

Finally, to interpret the Constitution the way that the first paragraph of the memorandum does—alluding to the intention of the framers—is to forget the plain meaning of the Constitution that Congress has complete power over the District of Columbia. You also must bear in mind the provision in Article VI of the principle of federal supremacy.

There may be reasons of a political nature which lead Congress to keep the District of Columbia in its present colonial status. If so, I prefer not to allude to these. My statement bears only on what I consider the unrestricted power of Congress in this matter. It can go the statutory route or it can go the constitutional amendment route. That is your choice. Either one would do the job. The first, of course, would be far easier to accomplish.

Mr. EDWARDS. Our next witness is Mr. Stephen A. Saltzburg, professor of constitutional law at the University of Virginia School of Law.

Mr. Saltzburg graduated in 1970 from the University of Pennsylvania and has served as law clerk for the Honorable Thurgood Marshall, Associate Justice of the United States Supreme Court. He has been a visiting professor of law at the University of Texas, the University of California at Boalt Hall, and the University of Michigan.

Would the gentleman from Virginia like me to yield?

Mr. BUTLER. I thank you, Mr. Chairman.

I have had the privilege to have had one experience with Mr. Saltzburg and I am pleased that we have asked the University of Virginia to provide us with some scholars here. That has been a problem in the past, so I appreciate your presence and will follow your testimony.

Mr. EDWARDS. We are delighted to have you here. You may proceed.

TESTIMONY OF PROF. STEPHEN A. SALTZBURG, UNIVERSITY OF VIRGINIA LAW SCHOOL

Mr. SALTZBURG. Thank you, Mr. Chairman. I would like to say, Mr. Chairman, that I have never had the honor before of testifying before a subcommittee, so it is quite a thrill for me. It is especially a thrill since Congressman Butler is here. I think it is fair to say, without disparaging any other member of your subcommittee that Virginians are quite proud of him and believe, whatever their political party, that his performance in the Congress is one of the outstanding examples of what Virginians can provide by way of leadership in the Government of the United States. That makes it an additional honor for me—to appear before him.

As far as my statement goes, rather than read any portion of the lengthy statement I've provided the subcommittee, I would prefer to just make a few additional comments and answer whatever questions you might have.

Among the additional comments are a few with respect to the best choice among proposed bills if the subcommittee and the Congress decide that a Constitutional amendment is necessary or desirable in order to provide voting representation for the District.

I notice that in some of the statements, several of which I've only seen for the first time this morning, there seems to be a strong senti-

ment for Joint Resolution 554, or a version thereof, that is, H.J. Res. 554, rather than 139 which I favored in my statement.

There are some problems with 554 I think. These problems certainly are not insurmountable, but I think the subcommittee ought to consider them before it adopts that proposed joint resolution.

For example, I believe that section 1 is quite clear on its face. It would treat the District as a State for the purposes of article V of the Constitution. The problem, though, comes in section 2 and its relationship to section 1.

Section 2 provides that the exercise of the rights and powers conferred by the proposed amendment shall be by people of the District constituting the seat of government. Then there is an important and—"and as shall be provided by the Congress."

It isn't clear to me whether the intent or the purport of section 2 is to say that Congress has ultimate power to deny the District participation in the ratification process for Constitutional Amendments in the future, or whether it assumes that Congress has the ultimate power to decide exactly in what way the District will be treated as a State.

If section 1 is read literally, I would think the Congress would have no power in the future over the District than Congress would have over any States. If that is the reading, the last clause of section 2 would be redundant. Assuming, as I do, that the drafters intended the clause to be meaningful, the last clause, it appears to me, would do exactly what it is intended to do if it is read to provide some sort of power for Congress over the District in the future. But that would have to be spelled out in some more detail to avoid the kind of constitutional bickering and constitutional litigation in the future that some members of the subcommittee, or, I should say, the House Committee on the Judiciary expressed in the past when Joint Resolution 280 was debated.

As for the very basic question whether a constitutional amendment is necessary if the District is going to have voting representation, like Professor Charles Wright, whose statement is before the subcommittee, I believe the answer is clear unless the District were to be made a State. Like Professor Miller, it is my view that if the Congress were of a mind to attempt to make the District the 51st State that most of the problems we are talking about could be solved, although I suspect I would recognize as problems things that he does not. This will become clearer as we answer your questions.

The statement by Assistant Attorney General Wald which I read only this morning, and, therefore, read it very quickly, does raise the problems with statehood that I would perhaps take more seriously than Professor Miller. I do think there are some questions, now that there is a District that has been accepted by the Congress over which Congress has exercised jurisdiction for some time and to which the 23d amendment is directed.

It is not absolutely clear to me that one will be free to admit the District as a State and assume that other parts of the Constitution would just take care of themselves.

But on balance I guess I find myself, like Professor Miller, concluding that the power given to the Congress to exercise legislative power over the District in article I, section 8 is not a bar to statehood. That power is one that I think Congress could give up without

violating any principle of constitutional law—just as Congress is free not to regulate certain aspects of interstate commerce and to leave them to the states as long as they don't burden interstate commerce too much in the eyes of the courts.

Thus, I believe that Congress could choose to treat the District as a State, if it so wishes without violating article I. section 8. The 23d amendment, I think is a greater problem. I don't believe it should be blinked—it is there. It would be somewhat inconsistent to have a 23d amendment treating the 51st State differently from all the others.

Of course, it would be possible to make the District a State and also to have a constitutional amendment clarify its status; that is, repeal the 23d amendment.

Whether or not the District should be a State I suppose is a political question that is well beyond any expertise that I have. Therefore, unless the committee has specific questions of me with respect to that, I would assume that my past reading of public sentiment—which is to resist the notion that the District should be the 51st State—still prevails, and the remarks that I would make would be addressed mainly to the issue of whether we want to amend the Constitution and in what way.

So, the last word for me, is to iterate my strongly held feeling that it is sensible, wise, and just for the Congress to provide equal representation in both the House and the Senate for the members of the District.

It seems to be an historical anomaly that the District remains unrepresented in a voting capacity in the Congress, and one that I would resent were I a District resident. I can understand why current District residents might also resent it. I would prefer to see that resentment remedied by a constitutional amendment.

Thank you.

[The prepared statement of Prof. Stephen A. Saltzburg follows:]

TESTIMONY OF PROF. STEPHEN A. SALTZBURG, UNIVERSITY OF VIRGINIA LAW SCHOOL

I have been asked to comment on several joint resolutions that have been proposed in the House of Representatives. All provide in one form or another for an amendment to the Constitution to provide representation for the District of Columbia in the Congress of the United States. H.J. Res. 139 contains four short sections allocating two Senators and an appropriate number of Representatives to the District, providing for an election to fill vacancies, defining the relationship of the proposed amendment to the 23rd Amendment, and giving Congress the power to enforce the proposed amendment. H.J. Res. 392 is very similar, except that it provides that Congress may allocate a power of temporary appointment to officials in the District under certain circumstances to fill vacancies in the Senate. Very different in form is H.J. Res. 554 containing only three sections. This resolution would provide that the 23rd Amendment would be repealed, that the District would have voting representatives in the Congress and as much authority to elect a President and Vice-President of the United States and to ratify constitutional amendments as any State, and generally that the rights and powers provided should be exercised by the people of the District in a manner to be selected by Congress.

While I find myself favoring the basic approach of H.J. Res. 139, I believe that standing alone it may be inadequate to accomplish the objectives of those who are proposing a constitutional amendment to provide representation for the District. With several changes, H.J. Res. 139 can be improved. During the remainder of this statement, I shall endeavor to suggest appropriate improvements. Not surprisingly, some of these suggestions will engender further controversy. With this expectation, I shall attempt to address the "problems" with my position as I proceed.

I. IS THERE A NEED FOR THE DISTRICT TO BE REPRESENTED IN CONGRESS?

In the Report accompanying H.J. Res. 280, which died on the floor of Congress, Representatives Butler, Kinduess, Ashbrook, Danielson, Moorhead, and Hyde raise a threshold question that must be answered before any specific amendment to the constitution is considered: i.e., is representation for the District necessary? The right answer must be "yes."

It is impossible to derive anything useful from the study of the intention of the framers in their treatment of the District in Article 1, Section 8 of the Constitution. It must be remembered that there was no District at the time the Constitution was drafted and ratified. We do know that a disruptive incident occurred in Philadelphia in 1783 involving soldiers who had been fighting against the British and that the response on the part of State officials gave rise to a general feeling that it would be beneficial to establish a special District run by the federal government which would not be dependent upon any State for protection. Beyond this we know little. It has been urged that because some 13 years after ratification of the Constitution a majority of the Congress took away the then recognized right of the District citizens to vote in Maryland and Virginia, the correct inference is that the framers believed that State representatives would also consider and take into account the interests of District citizens. The fallacy in this is that what happened in 1801 offers some support, but by no means conclusive support, for a reading of the intent of the framers of the Constitution. The fact that District residents voted in federal elections immediately after ratification of the Constitution might even be better evidence of the framer's intent. But more importantly, it must be recoguized that even in 1801 it was impossible for those members of Congress who took away the vote from District citizens to anticipate the precise future development of the nation. When it is recalled that entire races of people, women, non-property holders and others were denied the right to vote, it is not hard to see why assumptions as to the adequacy of representation of all by a few might have been acceptable then, but not now.

The answer to the question of whetcher representation of the District in the Congress is necessary cannot turn on history, because history is too poor a guide to knowledge of how the framers would have intended the needs of the District to be handled throughout the life of a changing nation. Rather, the answer must be found in current attitudes about the right to vote. Since the Supreme Court has declared one person, one vote to be a fundamental part of our democracy, and since this has come to be a cherished idea to most American citizens, I find myself echoing the testimony of Representative Gilbert Gude, who said in hearings before this Committee: "I support the extension of voting representation for the District because it is right, it is fair, and it is an essential element of representative democracy." Hearings before the Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary of the House of Representatives, 94th Cong., 1st Sess., 15–16 (1975) [hereinafter referred to as "Hearings"].

It is especially important that residents of the District be given the opportunity to elect voting members of Congress in view of the fact that Congress retains residual power over the government of the District. Citizens of the 50 states know that if the Congress fails to act on an important issue there is always the possibility that State or local governments will act to meet the needs of the citizens. State and local pressure might indeed be easier to mount and more sharply focused than is the national pressure on Congress. The residents of the District daily confront the fact that Congress often has acted and can continue to act to override decisions of any legislative body in the District. Thus, it is more, not less, important that the District, an entity that is not a State, have the same vote in Congress as does a State because Congress is in many instances the equivalent of a state and local government, as well as a federal government, for District residents.

Even if Congress were to relinquish entirely the power it now retains over District lawmaking, the enormous legislative power of the federal government today would require, in my view, that District Citizens have an opportunity to participate in an effective way in federal decisionmaking. When someone like myself travels from Charlottesville, Virginia to Philadelphia, Pennsylvania to visit my family, I travel by car, train, or plane. Automobile travel takes me over the roads of Virginia, the District, Maryland, Delaware and Pennsylvania. I find no difference of significance between driving in the District and driving in any State. The roads are the same, the problems are the same, and the interrelationship between

the States and the District is real and apparent. The same is true when I pass through Union Station on my way to Baltimore, Wilmington, and ultimately Philadelphia. In the rare instance that I travel by air, almost always I must change planes at National Airport. While National Airport technically is in Virginia, the proximity to and relationship with Washington, D.C. is readily apparent. Whatever differences there are between the District and the States pale before their similarities.

No matter what anyone thought in 1787, or in 1801, the District of Columbia, while not a State, faces most of the same problems as all the States. It is affected in the same way by general congressional legislation as the States. As congressional power and congressional responsibility expand, it is even more important that every citizen be able to directly express himself or herself on national issues. The only effective way is by representation in Congress. To the limited extent that the District is unique because it is a federal enclave heavily reliant on the Congress, the District has a greater need for voting representation in that body.

II. IS A CONSTITUTIONAL AMENDMENT NECESSARY?

Theoretically, the answer to this question is "no." If Congress were willing to cede the District back to Maryland, as it ceded land back to Virginia more than a century ago, and if Maryland were prepared to accept the cession, no amendment would be required. My reading of congressional and national sentiment is that practically speaking this solution is unacceptable to the people of the Nation. It might even be unacceptable to the citizens of Maryland and of the District respectively, if put to a vote. My personal view is that retrocession would be a bad idea for the same reasons that statehood would be a bad idea. These reasons will be set forth subsequently.

In the earlier Hearings and in the discussions of the joint resolutions now under consideration, a suggestion has been made that partial retrocession—i.e., retroceding jurisdiction over the District for voting purposes to Maryland—would be preferable to a constitutional amendment. It is somewhat ironic that this solution seems to be preferred by those whose opposition to a constitutional amendment is grounded in the argument that such an amendment might engender too many problems of interpretation. Article I, § 2 of the Constitution provides that the House of Representatives shall be chosen by the "People of the several States, and the Electors in each State shall have the qualifications requisite for Electors of the most numerous Branch of the State Legislature." Assuming that Maryland were willing to accept partial retrocession and that the Congress were willing to take this approach to the problem of representation, the obvious question that would arise is whether residents of the District qualify as "People of the several States." Logically they do not. District citizens are not residents, domiciliaries, citizens or Maryland "people." They are District "people." Moreover, since a usual qualification for voting for the State legislature is residency in the State, arguably, residents of the District would be barred by this Section despite partial retrocession, even if retrocession magically transformed District residents into Maryland people. Furthermore, Article I, § 2 also provides that "Representatives . . . shall be apportioned Numbers . . ." This portion of the Article was not changed by the Fourteenth Amendment, Section 2. If partial retrocession were attempted and if District citizens were permitted to vote in Maryland, would they be counted among the number of Maryland persons to be used for apportionment purposes? If not, then District citizens would be treated unequally. If so, arguably the apportionment would be subject to challenge by citizens of other States, because the District citizens are not among the Maryland "Number" in any but the most theoretical way.

The Seventeenth Amendment presents a related problem; it provides that the Senate shall be composed of two Senators from each State elected by the people thereof. Would District citizens be considered to be among the people of Maryland? Perhaps partial retrocession could insure this, although I have doubts. But the Seventeenth Amendment also says that the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature, the Seventeenth Amendment stands as a bar, it seems, to partial retrocession by statute as a way of giving a formal vote in the Senate to District citizens.*

*Although District residents voted in State elections from 1790 until 1800, State law was in effect in the District in this period, and the seat of Government had not yet been moved to the District.

Even assuming arguendo that partial retrocession would be constitutionally permissible, politically it is a bad idea. The reason why District residents should have their own representatives is that, although the District is similar to a State like Maryland in many respects, including the problems both face, it cannot be denied that the District is a separate place with definite boundaries of great political significance and that it would remain separate after partial retrocession. The very fact that partial retrocession would transfer to Maryland only the authority to control the federal voting rights of District citizens clearly signals that the citizens of the District would be unable to look to Maryland to represent their distinct and unique interests in the Congress. Just as various States have a special interest in solving problems for and extending a helping hand to those persons residing within their borders, the District has a special interest in solving its own problems and helping its own people. As noted above, in one respect the District has more need for individual representation than any particular State. Because it is the only federal enclave in the United States, it finds that many of its laws are derived from the will of a Congress comprised of representatives of the various States rather than from the will of District people. It is plain to me that those who live in the District have a stake in the District that is considerably different from members of Congress who permanently reside in separate States but who locate in the District on a part-time basis while they serve their terms in Congress. For example, those who permanently reside in the District probably have a feeling quite different from that of most members of Congress about the large amount of federally owned tax exempt property in the District. Citizens of the District should be heard on this, as on all subjects, through their own members of Congress.

Some practical difficulties with partial retrocession are immediately obvious. For example, it is disturbing to note that if a vacancy in the office of Senator were to arise, the vacancy would be temporarily filled by appointment by the Governor. But District residents would not participate in the election of the Governor.

I must admit that I view points such as this as small ones. The fundamental point is that those people who locate within the boundaries of the nation's capital need and deserve full and vigorous representation.*

III. IS STATEHOOD DESIRABLE?

In my view the answer to this question is "no." Keeping the capital a federal enclave preserves something important to our government. The number of federal institutions in the District, the location of the Congress and the White House, and the very idea of a "center" for the nation suggest that it would be wrong to entrust complete power over the District to any State, whether it be Maryland by retrocession or a new State called "Columbia" or something like it by amendment. No State should have responsibility for and control over the critical parts of the Federal power structure. Preserving a federal triangle or federal territories separate from, but located in, a State would pose enormous problems. See Testimony of Mayor Walter Washington in Hearings, *supra*, at 29; Testimony of John Hechinger, *id.* at 49. Rather than Statehood, the constitutional amendment to allow voting representation in the Congress seems to be a perfect compromise. It recognizes that citizens throughout the country should have a voice in what happens in the District of Columbia but that citizens of the District of Columbia should also have a voice both in federal programs that have as much impact in the District as in any State and, of course, in the ultimate decisions affecting the District only.

It must be emphasized that it would be unfair to say that the District is seeking the benefits but not the burdens of statehood. The District bears unique burdens and receives special benefits. It is different from a State, yes. But no difference justifies the denial to District citizens of the fundamental right of voting representation in Congress.

IV. IS H.J. 139 AN ACCEPTABLE RESOLUTION?

With certain additions this resolution can, in my view, provide the citizens of the District with appropriate representation without causing unnecessary problems in constitutional interpretation.

*In Raven-Hansen's, Congressional Representation for the District of Columbia: A Constitutional Analysis, 12 Harv. J. Leg. 167 (1975), the imaginative suggestion of "nominal statehood" is put forth. In light of the specific language in Articles I and IV and the language of the Supreme Court opinions cited by the author, I believe the suggestion should be rejected.

The principal constitutional argument against any constitutional amendmen giving voting representation in the Congress to District citizens is that such an amendment would violate Article V of the Constitution which provides that in relevant part "that no State without its Consent, shall be deprived of its equal Suffrage in the Senate." As I understand the argument, it is as follows: to allow the District to be represented in the Senate deprives States of their equal Suffrage. To be candid, I find this argument to be nonsense. From reading the records of the Constitutional Convention, I can find little to explain the precise wording of the quoted portion of Article V. It appears to be an attempt by the smaller states who favored the New Jersey plan to ensure that the larger states who favored the Virginia plan would not immediately amend the Constitution to do away with the provisions regarding the Senate that were so important to the smaller States. No matter how one views this provision—e.g., under a "plain meaning" analysis, by focusing on constitutional history and the intent of the framers, or by utilizing a structural analysis—letting the District vote in the Senate cannot be said to violate the letter, the spirit or the likely goals of the provision. Nothing in the language of this Article states that the Constitution cannot be amended to give entities other than States voting power in the Senate. All that is required is that a State have an equal vote. If the District is given two Senators, no State is in an unequal position when compared to any other State or to the District. Those who use this language to argue against the validity of a constitutional amendment point to nothing in the background of the Constitution to support a reading that no amendments concerning the Senate would ever be permissible, which I believe must be the thrust of their argument. While it is possible that the Constitution contains parts that are unamendable, I would think that, where possible, a living document, one written for the ages, would be construed to allow amendments to meet the felt needs of the times. The need of our time is representation for the District's many citizens.

It has been argued in a philosophical vein that the Constitution should not be lightly amended. With this I agree. But I do not view affording the citizens of the District voting representation in the Congress as a great disruption of the status quo. Yes, it is the first time that voting representation would be given to some entity other than a State. Aside from this interesting historical fact, the mechanics are simply not that difficult. Compared to the disruption attributable to the Supreme Court's voting rights cases, and congressional legislation like the Voting Rights Acts, this proposed constitutional amendment is a rather simple proposition: it gives the District citizens a vote, it does it as simply as possible with as little confusion as possible, and it brings the District into our one person, one vote Twentieth Century.

Is H.J. Res. 139 a simple, straight-forward proposal? I think that it is. Section 1 provides that the people of the District shall elect two Senators and the number of Representatives to which the District would be entitled if it were a State. According to the last census, the District would be likely to have two Representatives. Because Section 1 states that each Senator or Representative shall be an inhabitant of the District and shall possess the same qualifications as to age and citizenship and have the same rights, privileges and obligations as a Senator or Representative from the States, possible conflicts with Article 1, § 2 and the Seventeenth Amendment are avoided. These two constitutional provisions generally require that electors voting for Senators or Representatives have the same qualifications as electors for the most numerous branch of the State legislature. Section 1 simply provides a different approach for elections in which District citizens vote for members of Congress. Read in conjunction with Section 4, it is evident that the proposed amendment would give to Congress the authority to define who could vote in the District's congressional races. No one need fear that Congress would usurp the power intended to be given to the people of the District, since the one person, one vote concept, together with the kind of legislation that is to be expected from Congress once the proposed amendment is approved by three-quarters of the States, will ensure that the District elections are as fair and open as those held in any State.

Section 2 states that when vacancies happen in the representation of the District, in either the Senate or the House, the people of the District shall fill such vacancies by election. Once again, this Section should be read in conjunction with Section 4, and it is apparent that Congress is authorized to provide for special elections or to allocate the power to provide for special elections to local government. While this provision is simple and straight-forward, I oppose it. Although Article I, Section 2 provides that a vacancy in the House shall be filled by election, the Seventeenth Amendment authorizes temporary appoint-

ments of Senators until vacancies are filled by election. There are two possible reasons for distinguishing the District from the States with respect to the Senate: 1) it is not clear that Congress would trust the executive authority in the District to make appointments, and 2) it is also unclear whether the executive authority would ultimately be considered to be the Mayor or the President of the United States.

I would prefer language like the following in lieu of the current language of Section 2: "When vacancies happen in the representation of the District in either the Senate or the House of Representatives, the people of the District shall fill such vacancies by election or temporary appointment in accordance with congressional legislation." The advantages of this language are two: First, it avoids the need for current debate about whether election is appropriate in all circumstances as a way of filling a Senate vacancy and second, it assures the Congress that, if and when the District gets more power over its own affairs and the Congress trusts the District to run its affairs without close congressional scrutiny, it would be appropriate for Congress to allow the District's executive to fill temporary vacancies. There is no need to chisel in granite forever one approach to filling vacancies. It might be argued in response that such a proposal would represent the only place in the Constitution where Congress is given power to choose one or another method of filling a vacancy. But I think that the appropriate response is that the amount of local control allocated to the District has changed over time, whereas the States have always had lawmaking power independent of the federal government. There is no reason why the changing nature of District government cannot be recognized by a sui generis constitutional provision.

The third Section leaves the 23rd Amendment to the Constitution untouched. I would repeal the 23rd Amendment. The thrust of H.J. Res. 139 is to give equal voting representation to District residents. I can see no good argument for doing this in the Congress and not in the Electoral College. I realize that the Congress is considering Electoral College reform. If it comes, it can come for the District as well as for the States. Until such time, the 23rd Amendment should be viewed as a step along the way to equal voting rights for District citizens. Once the commitment to complete equal rights is made, the Amendment is an anomaly. The best argument for Section 3 is that to propose repeal of the 23rd Amendment is to add the controversy surrounding H.J. Res. 139. Even so, one who supports an equal voice for the District in the Congress should appreciate the need for an equal voice in the selection of the leaders of a co-equal branch of government. If, for one reason or another, a judgment is made not to disturb the recently enacted 23rd Amendment, so be it. Otherwise, I would prefer that the language of Section 3 of H.J. Res. 554 be substituted for the first sentence of Section 3 of H.J. Res. 139. The second and last sentence of Section 3 of H.J. Res. 139 should be kept as it is to make clear that if the House of Represeutatives has to choose a President, the District would be treated in the House as if it were a State, which is important in view of the fact that the House votes by State under the 12th Amendment.

Section 4 provides that Congress shall have power to enforce the amendment by appropriate legislation. This Sectioin should remove any difficulty posed by Article 1, § 4 of the Constitution, which provides, in part, that Congress may not alter the places of choosiug Senators chosen by the States. Section 4 should make clear that Congress has authority to control the District's election of its Congressional representatives. While this gives Congress more power over the District than over the States, there is nothing in the Constitution to bar such an approach by constitutional amendment. Furthermore, this approach is consistent with the notion that at the same time that Congress is treating the citizens of the District more equally than ever before, the Congress is recognizing that the District is in some ways unique and that Congressional oversight in the name of the United States is desirable.

If I were drafting the proposed amendment, I would probably add one more section. It would sound something like the following lines: "Congress shall have the power to provide that the District may be included in the ratification process for any future constitutional amendment." If District citizens are to be treated as equal in the halls of the Congress, it is somewhat ironic that H.J. Res. 139 would deny them an opportunity to be heard during the ratification process for future constitutional amendments. This is not to say that District citizens would have no voice. They would be able to express a view in both Houses of Congress on whether an amendment should be sent to the States for ratification.

But the District would have no voice beyond this. Apparently, there is a good reason for this irony. It is not clear that the elected governing body of the District is the equivalent of a State legislature. Therefore, it is not clear that Congress should trust the elected governing body of the District to ratify in the name of the District a constitutional amendment. Over time more responsibilities may be given to the District government and confidence in its capacity to make decisions may grow. My proposed fifth Section would recognize that Congress should have the power to include the District in the ratification process in a manner that it deems desirable. There is little reason now to shut the door on the possibility that the District can effectively participate in the amendment process in the future. And there is scarcely more reason to undertake a debate now on the current state of local government in the District of Columbia.

One final red herring needs to be disposed of before I conclude. The argument has been made that persons who would vote for members of Congress in the District have roots that do not run deep enough to warrant the same kind of representation given to citizens of the States. In this mobile society it is questionable whether most people have roots that run very deep in the community in which they vote. Assuming, however, that citizens in most States have drawn sustenance from the places in which they vote for a longer period than have District residents, the fact remains those who are in the District, even for a period of only a few years, have an interest in common with those who have been there for a longer period of time. One who resides in the District and can satisfy residency requirements has the same problems as any other District resident and the same stake in voting. What difference does it make whether someone is spending two, three or ten years in the District? Federal legislation that extends beyond the States to reach the District affects people who are in the District even for a short period. And more importantly, the legislation that Congress many enact with specific reference to the District has a particular impact on those who reside there for any length of time. The Supreme Court has made it quite clear that it is permissible for States to attempt to differentiate people who have been present for a short period from those who have been present for a long period when it comes to voting. The Congress paved the way for this view in its voting rights legislation. Those who have sufficient connection with the District qualify as voters and deserve a vote no matter how long or how short a period they have been present.

A carefully conducted census should assure that only those who are permanent residents of the District are counted for apportionment purposes.

Mr. EDWARDS. Thank you very much Professor Saltzburg. Our final panel member is Patricia M. Wald. Ms. Wald is the Assistant Attorney General of the Office of Legislative Affairs and I might add that the subcommittee staff has always found it a privilege to work with Ms. Wald.

We are delighted to have you here and you may proceed.

TESTIMONY OF PATRICIA M. WALD, ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGISLATIVE AFFAIRS

Ms. WALD. Thank you Chairman Edwards, Congressman Butler. If I may, I would like to very briefly summarize some of the points from my longer statement which is in the record.

As the subcommittee knows, a task force consisting of Members of Congress, District of Columbia officials, and administration officials met over a period of several months and arrived at several positions outlined in Vice President Mondale's statement of September 21.

The administration endorsed in that statement "the principle of full voting representation for the citizens of the District." This morning I would like to discuss briefly the administration's thinking as to how best fulfill that goal of full voting representation.

It has been eloquently argued by Professor Miller here that the District could be given by act of Congress instant statehood thereby

avoiding a more time consuming and relatively cumbersome process of constitutional amendment. Although we are not expressing any opinion on the ultimate desirability of statehood, we cannot agree that it can be achieved without constitutional amendment.

We do see article I, section 8, clause 17, as according Congress the power to exercise exclusive legislation in all cases whatsoever over such District as may become the seat of the Government of the United States as an obstacle to the unilateral decision by Congress to convert the District into a State.

It has, of course, been suggested that a Federal enclave might be carved out of the District to encompass all Federal buildings and land over which Congress would continue to exercise jurisdiction while the rest of the District of Columbia would become a State.

This presents practical and even theoretical problems. More than half of the District's land area is occupied by Federal facilities, but those facilities are scattered throughout the District so as to make any geographically concentrated Federal enclave an impossibility.

Complex arrangements for fire, power, police, and sewer services would be required. I agree with Professor Miller that presumably such arrangements could be arrived at eventually. But we think there is a more basic issue.

Would the remaining non-Federal area constitute in any real sense a geographically homogeneous entity that justifies statehood? We don't suggest an answer in either the affirmative or in the negative for all time, but only that legitimate questions might be raised as to the political wisdom and sincerity of a congressional enactment which attempted in effect to Balkanize the District so as to create a new State by building it around Federal land and installations.

One variation on the statehood proposal is to leave the present District boundaries intact and convert them into a State, then utilize the provisions of article I, section 8, clause 17 pertaining to Federal installations within State boundaries in order to retain congressional control over the Federal property.

There are problems with this approach. First, we believe the consent of the State legislature must, under article I, section 8, clause 17, be obtained to permit the location of such installations. And, second, we believe the syntax of the constitutional provision is such that the drafters meant for the District not to be located within the borders of any State.

It would seem at odds with that intent to treat the seat of Government just like any other Federal facility in a State.

There are, finally, two other objections to conferring statehood upon the District by congressional resolution. The 23d amendment, to which Professor Saltzburg referred, provides that the District shall choose a number of electors for President and Vice President no greater than the number chosen by the least populous State.

If the District became a State it would be entitled to four electors under article II, section 1. Perhaps, as some people have argued, the 23d amendment would simply become a dead letter since it applies to the District which would then cease to exist and become a State.

Still, the question of whether Congress could lawfully make a dead letter out of a constitutional amendment would almost surely be raised and become the subject of litigation.

Article IV, section 3, clause 1, also states that no new State shall be formed by parts of old States without the consent of those States. When Maryland in 1791 ceded land to the Federal Government it was for the creation of a District as a Federal seat, not for a new State.

It is at least questionable—I don't suggest that we know the definitive answer—whether a new State could be created from that land even after the ensuing passage of all of this time without the consent of the Maryland State government.

Aside from constitutional concerns with other alternates, however, there are in our opinion some cogent reasons why we should press now for full congressional representation, leaving the problem of statehood for a later time.

We are afraid that bringing that question to focus now would inevitably involve more delay in working out the financial home rule question.

Another suggestion for solving the problem of full D.C. representation has been to have Congress cede the District back to Maryland thereby allowing D.C. residents to vote as Maryland citizens.

This presents the issue, again, of whether Maryland must itself consent to accept any such retrocession. We think it would have to, under article IV, section 3. We believe more basically that such a course would do injustice to the political, social, and economic life of the District and its inhabitants which has taken its own unique developmental course over the past 200 years.

This option would also require a constitutional amendment, in our view, in view of the exclusive legislation clause.

One last variation on this proposal would be to retain congressional governance of the District but to permit D.C. residents to vote in Maryland.

We believe that this, too, would require a constitutional amendment because, as I believe Professor Saltzburg has pointed out in his statement, there is language in article I, section 2, and in the 17th amendment limiting Members in the House and Senate to those elected by people of the several States.

Under such a plan, too, District residents would not be able to vote for Maryland governors or legislators even though those officials would determine the qualifications of voters for Federal elections and even the places where elections are held as well as the drawing of election districts and the appointment of interim Congressmen.

Thus, it would not only be politically artificial, but it would fall short of giving D.C. residents full representaion.

In sum, we think the most straightforward and direct route to full representation is through a constitutional amendment such as H.J. Res. 554 and 565. Those proposed amendments would treat the District as if it were a State for purposes of electing members to the House and Senate, and for other purposes.

We don't think article V of the Constitution would be violated so as to require assent by all 50 States, since no State would, in effect, be deprived of its equal suffrage in the Senate. The District's position would be no different than that of any of the dozens of new States that have entered the Union.

We don't think any precedent would be set that would affect the very different situation of territories whose inhabitants are not U.S. citizens, many of whom are destined for independence or statehood.

In summary, the administration believes that H.J. Res. 554 and 565 are the preferable alternatives among the resolutions. As our longer statement pointed out, we do have some small drafting suggestions to clarify the second section, but we believe that these resolutions are the only ones that insure that the District will obtain the full number of Presidential electors to which it is entitled.

The language, we believe, of these resolutions is sufficiently flexible to allow full District participation in Presidential elections either under the existing electoral college system or any other system that may replace it.

They also provide for the people of the District to exercise the various election functions such as the drawing of Congressional districts, determining the qualifications of voters, et cetera.

We think, in short, that these resolutions are the most straightforward, direct, proper, and long-awaited resolutions of the right of District residents to vote like the rest of the United States.

Thank you.

[The prepared statement of Ms. Wald follows:]

STATEMENT OF PATRICIA M. WALD, ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGISLATIVE AFFAIRS

Mr. Chairman and members of the Subcommitte, it is my distinct pleasure to appear before you today for the purpose of presenting the views of this Administration on the representation of the District of Columbia in Congress.

As Vice President Mondale stated on September 21, a task force composed of Members of Congress, officials of the District of Columbia government, and representatives of the executive branch has met over the past several months to review the major issues in federal relations with the District of Columbia. As a result of the work of that task force, the Vice President announced that "[the President] and his Administration are dedicated to upholding the principle of full voting representation for the citizens of the District. We believe there is no justification for denying citizens equal representation at the federal level because they happen to reside in the District of Columbia." In other words, this Administration supports full voting representation in the Congress for the District because we believe that simple justice requires it.

As you know, numerous resolutions having been introduced over the years for the purpose of achieving this goal of voting representation to one degree or another. The Subcommittee has requested that I address myself this morning to four resolutions which have been introduced in this session: H.J. Res. 139, 142, 392, and 554. In addition, over the years, various alternative mechanisms for the representation of D.C. in Congress have been proposed which are not contained in the current group of resolutions. I would like to discuss briefly the reasons why the Administration has not endorsed any of those other alternatives at this time before turning of the specifics of the four pending resolutions. Our choice among the alternatives is based in part on constitutional, and in part on policy grounds.

I. ALTERNATIVE WAYS OF PROVIDING DISTRICT OF COLUMBIA REPRESENTATION IN CONGRESS

One alternative which has been the subject of extensive discussion during this Subcommittee's past hearings on the issue of D.C. representation is the possibility of providing for the District of Columbia to enter the union as an actual state. Some of those who favor this option have argued that new states can be admitted to the union by means of a single majority vote in Congress, thereby avoiding the cumbersome process of amending the Constitution. We believe, however, that any attempt to make the District a state without an amendment to the Constitution would present both practical and legal difficulties. Article I, section 8, clause 17 of the Constitution provides that Congress shall have power:

To exercise exclnsive Legislation in all Cases whatsoever, over such District . . . as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States . . . .

This grant of exclusive power to the Congress over the seat of the Government cannot, in onr opinion, be reconciled with wholesale abrogation of sovereignty by the Congress to a new state in which the seat of the Federal government would be located. We do not think the admission of the District to the union as a state after a mere majority vote by the Congress would be sufficient to overcome the constitutional command to exercise exclusive legislation over the District.

One suggested method of overcoming this difficulty advanced by proponents of statehood wonld be to carve a "federal enclave" out of the District, over which the Congress would contine to exercise exclusive legislative jurisdiction. The creation of the federal enclave could presumably take place by one of two methods: First, Congress might in effect redraw the map of the federal district to include only the areas in which federal installations are located; the remainder of what is now D.C. would then be admitted as a state. But at this point, a practical problem is presented.

The impact of the Federal presence in D.C. is far greater than the impact of the federal presence in any single state; more than half of the District's land area is covered by federal facilities. which are scattered throughout the area. Thus, as the Mayor of the District has testified on at least one prior occasion before this Snbcommitte, any concentrated "federal enclave" would be very difficult in circumscribe and would have to be geographically fragmented, resulting in complex arrangements for sewers, police and fire protection and other services. Whether such a geographical entity could fairly be characterized as a single District at all is questionable.

A second method that Congress might ntilize in making the District a state would be to leave its present boundaries intact, but to designate as federal enclaves the federal buildings and land already located there which would be identical in status to federal installations in other states. It is true. as Congressman Thornton has pointed out in his prepared statement, that Article I, section 8, clause 17 gives Congress the same powers as to such installations that it exercises over the District in its present form. But that clause also contemplates that the "Consent of the Legislature of the State" in which the federal installations is located shall be obtained before the federal facility, subject only to the laws of Congress, is installed. This is the manner in which the Framers accommodated state sovereignty with the federal government's interest in exercising anthority over its own installations. Thus, the constitutional provision cited above could be construed as requiring the consent of the District's state legislature before the federal enclave would be authorized. Congress would thns be placing the federal government in the position of seeking permission to remain where it already is. Moreover, specific provision for the District's unique status separate and apart from federal installations located iu other states suggests the drafters did not intend to treat the one case exactly like the other. On the contrary, the intent of the Framers was clearly that the actual seat of the federal government should not be located within any state; that is why they provided for the creation of a federal district in the first place. If the reasons for the creation of a federal district not within any state have lost their validity, the appropriate procedure for bringing the status of the District of Columbia into line with present-day realities is to amend the Constitution, rather than to ignore the drafters' intentions.

Conferring statehood on the District withont amending the Constitution would also raise questions about the effects upon the 23rd Amendment. That amendment provides that in choosing the President and Vice President, the District shall be entitled to no more electors than the least populons state; at present it chooses three. But under Article II, section 1, clause 2, if the District were to become a state itself, it would be entitled at its current popnlation level to fonr electors. It has been argued that, since the 23rd Amendment refers by its terms to "the District constituting the seat of Government of the United States," it will simply become a dead letter when a District ceases to exist. We do not believe, however, that Congress is entitled under the Constitution to take any action which would make part of that document a dead letter, short of amending it according to the processes it provides.

We also note that Article IV, section 3, clause 1 states that no new states may "be formed by . . . Parts of States, without the Consent of the Legislatures of the States concerned as well as the Congress." When Maryland ceded what

is now the District to the federal government, it consented only to creation of a federal district, and not to the creation of a new state. To make the District a state at this time by Congressional enactment alone raises serious questions of whether the spirit—and perhaps the language—of that clause would be violated. While it may indeed be in the best interests of the District and the nation for the District eventually to become a state, the many financial and practical as well as constitutional concerns that would accompany its total divorce from federal controls would, we feel, delay unduly the rights of the District's citizens to be represented in Congress. On the other hand, if the District is now admitted to Congress on the basis of a constitutional amendment which provides that it shall be treated *like* a state without actually *becoming* a state, Congress reserves the right to redefine the scope of home rule in the future while assuring that District citizens will have an effective voice in any such future decision.

Another suggestion that has been made as a method of bringing the citizens of the District of Columbia into full participation in the federal political process without the necessity of a constitutional amendment is for Congress to cede the District back to the state of Maryland. District residents could then participate in the political life of that state, including the election of Senators and Congressmen. There are definite problems with this approach, however. A substantial question exists as to whether the Maryland legislature would have to vote to accept this cession; Article IV, section 3 of the Constitution appears intended to enunciate the general principle that the borders and land areas of states are not to be changed without their consent. Thus, in 1846, when the land area that is now Alexandria County was ceded back to Virginia, the Virginia legislature did vote to accept the territory. We are aware of no substantial sentiment in Maryland in favor of the return of the District which would lead that state's legislature to consent to retrocession. Moreover, there is no indication that the people of the District desire to become citizens of Maryland. The District has become a distinct political entity, with its own leaders, and its own political, social, and economic life. We seriously question the desirability of submerging that identity in a larger political unit such as that of the state of Maryland. It would be an artificial marriage, at best.

A third proposal has been to allow, by vote of a majority in Congress, residents of the District to vote in Maryland congressional elections, without making the District a part of that state for other purposes. This alternative also has serious legal and practical shortcomings. The legal difficulties have been well articulated by Professor Stephen A. Saltzburg in his statement prepared for this Subcommittee, which points out three problems of constitutional interpretation presented by the partial retrocession suggestion: Whether District residents would be considered "People of the several States" for purposes of choosing the Members of the House of Representatives under Article I, section 2; whether District residents would be among the "respective Numbers" of people in the several states for purposes of apportioning representatives under the same provision of the Constitution; and whether District residents would be people of Maryland for purposes of the 17th Amendment, which states that "The Senate of the United States shall be composed of two Senators from each state, elected by the people thereof for six years . . ." Unless the Constitution is amended to resolve the difficult questions that could be posed by the application of this language to D.C. participation in Maryland elections, the partial retrocession alternative will in all likelihood result in political acrimony and protracted litigation.

The practical difficulty which has not been successfully addressed by the proponents of a partial retrocession is that under Article I, sections 2 and 4, the state legislatures enjoy substantial autonomy to determine the qualifications of voters and the manner in which elections are held. Since District residents would not be entitled to vote in elections of Maryland *state* officials, they would be unrepresented in such important matters as the drawing of election districts and the appointment by Maryland's governor of individuals to fill vacancies in Congress between elections. Therefore, District participation in Maryland federal elections would not constitute a grant of full representation in the federal political process.

Because of all of the difficulties I have described, the Administration favors the approach taken by all four of the resolutions before us today: the Constitution should be amended to provide that, for purposes of representation in Congress, the District shall be treated as though it were a state. The residents of the District would thus be empowered to elect two Senators and the number

of representatives to which their population entitles them (two members of the House at the current population level of the District).

A constitutional amendment is necessary under this approach because Article I, section 2 of the Constitution provides that the House of Representatives "shall be composed of Members chosen . . . by the People of the Several States," and the Senate shall be "composed of two Senators from each State." If the District is not to be a state, but is rather to be treated as if it were a state, then an amendment is required. One of the fundamental purposes of Article I is to structure the various levels and forms of government within the United States. The Article very clearly contemplates that there is to be a Congress and there are to be states, with specific powers allocated to each. The Article just as clearly contemplates that a third unit of government—a federal district—is to exist in a form separate and distinct from that of the states. Because Article I was in part intended precisely to distinguish the federal district from the states, we do not believe that the word "state" as used in Article I can fairly be construed to include the District under any theory of "nominal statehood." *Cf.* P. Raven-Hansen, "Congressional Representation for the District of Columbia: A Constitutional Analysis," 12 *Harv. J. Legis.* 167 (1975). If "nominal statehood" is not a viable possibility, then a constitutional amendment is necessary.

II. ARGUMENTS AGAINST AN AMENDMENT TO PROVIDE DISTRICT REPRESENTATION IN CONGRESS

Several arguments have been raised in the past against treating the District like a state without actually making it one. We do not find any of them persuasive. First, it has been said that the second proviso in Article V requires that any such action be ratified by all 50 states, rather than by the three-fourths normally required for amendments. Article V establishes the procedures for amending the Constitution, with the proviso that: no State, without its consent, shall be deprived of its equal Suffrage in the Senate. We do not agree that representation of D.C. in Congress without making it a state would require any specific ratification procedure. The plain meaning of these words in Article V is to assure the integrity of the constitutional scheme whereby one house of Congress is composed of members whose numbers vary according to the population of the states, while another is composed of an equal number of members from each state. That is, the purpose of the proviso is to insure that no state gets more representation in the Senate than any other state. This principle would not be contravened by a constitutional amendment allowing the District two Senators. The practical effect of such an amendment would be no different from the practical effect of admitting new states to the union. The number of Senators has increased since the adoption of our Constitution from 26 to 100. It has never, to our knowledge, been seriously argued that this change in the total number of Senators deprives any pre-existing state of its equal suffrage in the Senate. There simply is no basis in reason for concluding differently merely because the District is being admitted to the Senate as if it were a state, rather than as a state. Therefore, we do not believe that it is necessary for all fifty states to ratify the admission of D.C. to the Senate on this basis; the normal process of ratification, requiring the consent of three-fourths of the states, should suffice.

It has also been argued that, if a precedent is set by providing for representation of an entity other than a state in the Senate, there will be no rational basis for distinguishing other territories, commonwealths, and possessions of the United States. But several obvious distinctions can be drawn. First, District residents are United States citizens, while residents of the territories, commonwealths, and possessions are not. Second, residents of the District, unlike those of the territories, commonwealths and possession. are already bearing the full burden that statese bear in terms of federal taxation. Moreover, other territories, commonwealths, and possessions do not have their budgets and legislation reviewed in Congress before they become effective. Because the actions of the D.C. government are subject to such review, the residents of the District have a particularly strong need to be represented in Congress.

Unlike territories, commonwealths, and possessions, only the District is part of the contiguous United States and only the District has such a unique status that it is specifically mentioned in the text of the Constitution. Over the years, the various commonwealths, territories and possessions have sometimes requested, and been granted, independence from the United States. Clearly, this is not an

option for the District, and has never been seriously argued for hy persons connected with District politicai affairs. As a resuit, we do not believe that any dangerous precedent will be set by providing for full representation of the District in Congress.

III. DIFFERENCES BETWEEN THE RESOLUTIONS BEFORE THE COMMITTEE

Important differences do exist betwecn the four resolutions we are considering today. All of the resolutions except H.J. Res. 554 wouid ieave the 23rd Amendment to the Constitution, which provides for District participation in the electoral coiiege, intact. H.J. Res. 554, on the other hand, wouid repeal the 23rd Amendment. We support this provision of H.J. Res. 554. The number of eiectors to be chosen by the District is limited by the 23rd Amendment to the number to which the ieast popuious state is entitled (three). If the District is granted a totai of 4 representatives in Congress—two senators and two representatives—then the District would, if it were a state, he entitied to four electors. We see no reasonable hasis for denying to residents of the District their fuii entitiement to participation in the choice of the President. Further, the wording of H.J. Res. 554 is sufficiently fiexibie to provide full District participation in presidential elections regardless of what may he the future of the electoral college. The resolution simply states that "for pnrposes of * * * eiection of the President and Vice President * * * the District constituting the seat of government of the United States shall be treated as though it were a state." Thus, so iong as there is an electoral college, the District wiii take part in its deliberations on the same basis as if it were actuaiiy a state. If the electoral college is aholished, the District wiii particiipate on an equal basis in whatever systcm is established in its place.

Another set of distinctions between the four resolutions relates to the various powers exercised by state legislatures in reguiating the election of representatives to Congress. The first of these areas is the fiiiing of vacancies in Congress when they occur. H.J. Res. 139 and H.J. Res. 142 both provide that when vacancies occur, they shall be filled by the people of the District by election. H.J. Res. 392, hy contrast, provides that such vacancies shail be filled by eiection unless Congress provides for District residents to elect a legisiature and an executive, in which case the legisiature wouid be empowered to authorize the executive to make temporary appointments. Finaiiy, H.J. Res. 554 provides that "The exercise of the rights and powers conferred under this articie shali be by the peopie of the District constituting the seat of government, and as shall be provided by the Congress."

We believe that, with a siight modification, the language of H.J. Res. 554 is preferabie. The purpose of constitutionai enactments is to provide broad guidelines for the conduct of government. At the same time, they mnst not be so nnspecific as to provide no guidance at ali. If H.J. Res. 554 were amended to provide that "The exercise of the rights and powers conferred under this article shaii be by the peopie of the District constituting the seat of government, *in such manner* as shaii be provided by the Congress," this balance would be struck well. Such ianguage, which is modeied on that of the 23rd Amendment regarding the choosing of Presidentiai electors, would indicate that it is the responsihiiity of Congress to provide some mechanism wherehy the peopie of the District, rather than Congress itself, fiii vacancies within Congress. Beyond this broad instruction, however, Congress would retain its fiexihiiity in determining preciseiy what mechanism is to be estabiished for the exercise by the District's people of the power to fiii vacancies. We presume that Congress wiii wish to piace the authority to make such decisions in an elected legislature within the District. But the Constitution need not address in detaii the form of government which exists within each state or anaiogous unit of government.

The ianguage that we have suggested for H.J. Res. 554 would also be effective regarding the dre ing of election districts, estahiishment of the place of choosing Senators, and determining the quaiifications of electors. Each of the other resolutions wouid apparentiy ieave Congress free to perform these functions on its own if it so desired, since each contains a statement that "The Congress shaii have power to enforce this articie by appropriate iegisiation." The guiding principie here shouid be preciseiy what is intended by H.J. Res. 554, namely, that the people of the District shaii exercise these powers, just as if the District were a state aithough the deiegation is hy Congress.

In summary, the Administration enthusiastically endorses H.J. Res. 554, and considers its enactment a high priority. The Congress is urged to take early action on it so that the states may proceed with the process of granting to the citizens of the District their due as citizens of the United States.

Mr. EDWARDS. Thank you, Ms. Wald. The gentleman from Massachusetts, Mr. Drinan.

Mr. DRINAN. I want to thank Ms. Wald. I'm sorry that I was detained. This is a very comprehensive statement. At this time I have no questions but I do wish to compliment you on the full nature of the argument that you have made.

Mr. EDWARDS. The gentleman from Virginia, Mr. Butler.

Mr. BUTLER. Thank you, Mr. Chairman, I think this is the first time that the gentleman from Massachusetts did not have a question for a witness.

This is a threshold event for the committee. I appreciate your presence here.

I have two or three problems with questions that are raised. Let's begin because I don't believe we have had too much on my questions from the panel.

By extending the power to the District to ratify proposed amendments and if the same speed follows with this resolution as it did the 23d amendment, there is a very strong possibility that we might elevate the status of the District of Columbia in the ratification process and pass the equal rights amendment in the process.

What would be the effect of the change in the number of ratifying jurisdictions pending the final adoption, rejection, or expiration of the opportunity for ratification of the equal rights amendment?

Anyone on the panel may answer that, if you understand the question.

Mr. MILLER. The Constitution is clear—that it requires three-fourths of the States to ratify. If there are 51 States, it requires three-fourths of 51.

Mr. BUTLER. As of that moment?

Mr. MILLER. As of that moment. I think it is very clear on that point.

Mr. BUTLER. So the passage of this would make the number of States required 39 instead of 38?

Mr. MILLER. I bow to your arithmetic, sir. I haven't computed it.

Mr. BUTLER. Does the rest of the panel agree with that?

Mr. SALTZBURG. I am not so clear, Congressman Butler. The problem I thought you were referring to was the one that might arise if the Congress went the route of Joint Resolution 554 which provides for purposes of article V that the District would be treated as if it were a State.

The question might arise because presumably the District would become a 51st entity at some point, for purposes of article V.

Your question was at what point? What would it's impact be on the equal rights amendment? I know of no authority that would really answer the question. My assumption would not necessarily be the same as Professor Miller. The two-thirds vote required in the Congress to put forth the amendment in the first place might be said to imply that only States admitted when the amendment is proposed could ratify.

The problem would be hardest if the District were made the 51st State. Article V could be read as focusing on one time period for purposes of the two-thirds and the three-fourths requirements for purposes of ratification. On the other hand, the two-thirds requirement relates to Members of Congress and the three-fourths requirement relates to States. There is nothing inherently wrong in reading article V as requiring three-quarters of all States admitted at any time before the end of the ratification process.

Certainly, I would be reluctant to say that either view is clear and constitutionally compelled. It might very well be that you would never have to face the hard question posed. By creating a legislative history that would make clear your intent, you could define away the problem. For example, in Joint Resolution 554 you could make it apply only to prospective amendments. That is, amendments that are proposed and sent to the States and the District following ratification.

Ms. WALD. I certainly agree that at first glance the answer would seem to be that if District of Columbia representation as provided in House Joint Resolution 554 were adopted; that is, it had been ratified by three-fourths of the States and the District was operating pursuant to that amendment before the equal rights amendment reached the point of the necessary number of States for ratification, the District of Columbia would be entitled to vote on ratification of the equal rights amendment.

I've been trying to do some quick arithmetic and I think that 39 sounds like the right number. It's someplace in the middle between 38 and 39.

That would seem to me to be the logical result of it.

Mr. BUTLER. Well, I just don't want to jeopardize the equal rights amendment.

Ms. WALD. I was going to say that we might ratify the equal rights amendment before the District of Columbia amendment.

Mr. MILLER. I think I agree with Professor Saltzburg. There is no law on this matter. It is writing on a clean slate so far as the Constitution goes. But there is no case, to my knowledge, that deals with this.

Mr. BUTLER. You are saying that this is somewhat of a political question that can be resolved at the threshold—at the time the Congress launches the——

Mr. MILLER. I really didn't say that, but the last important statement of the Supreme Court is *Coleman* v. *Miller* in 1939 in which, I think, the Court did say that this matter of ratification, et cetera, is a political question, up to Congress to resolve for itself.

Mr. BUTLER. Well, I have some more questions.

Mr. EDWARDS. The subcommittee will recess for a vote in the House and return in 10 minutes.

[Recess.]

Mr. EDWARDS. The subcommittee will come to order. Before I recognize the gentleman from Virginia, will the witnesses please speak directly in the microphone. Some of the people in the rear can't hear. Mr. Butler.

Mr. BUTLER. Thank you, Mr. Chairman. I have another question—one that has troubled me.

With reference to the power of the State to withdraw its earlier ratification of a constitutional amendment prior to the certification

by the Administrator of GSA that it is—it has in fact been adopted by three-fourths of the States. I do not think we can leave aside the present question. Would it be within our power and would it be advisable for us to establish in the proposing resolution for the D.C. constitutional amendment—whichever one we choose—that a State ratification can be withdrawn or rescinded? I appreciate any or all of the members of the panel speaking to that.

Ms. WALD. Congressman Butler, first of all, as I'm certain you are aware more fully than I, who am new to this domain, that the question of the power of a State to withdraw ratification after it has once approved is certainly in what I would call a dark gray constitutional area.

The case of *Coleman* v. *Miller*, which dealt with analogous action by some States regarding the 14th amendment, established the principle, as I read it, that the decision is left in the political arena for Congress to decide. Whatever Congress is sitting at the time that ratification is certified to it decides whether or not the requisite number of States have ratified an amendment.

The basis for that appears to be historical, insofar as I can tell, based upon the history of the 14th amendment and perhaps some other events. But the fact is that the Supreme Court in the *Coleman* v. *Miller* case did not think that there were sufficient standards either to be found in article V or elsewhere for the Court to impose its own judgment on a process that properly belongs in the Congress.

I believe that is still our position: that ultimately the Congress which had before it the question of whether the requisite number of States had ratified would have to make that decision.

Now, your second question is, I believe, whether Congress has the power, and whether it would be advisable to actually write into a proposed constitutional amendment a statement that ratification may or may not be rescinded. My opinion at the moment would be that the chief benefit of such a thing would be to indicate to the States the intent of the Congress which proposed the resolution as to whether or not its adoption would be binding. Perhaps including such a provision would give the States some notion of what the proposed amenders, the Congress, thought the rules of the game were.

Where I wander off the reservation, I think, is that I have grave doubts whether such a provision, even if inserted in the text of the amendment rather than the preamble would actually bind the Congress which ultimately decided whether the amendment had been ratified. That is, I doubt that this Congress could bind a future Congress.

I'm not prepared at this time to say that I think that this Congress could do so in light of the small amount of constitutional authority that we have in the *Coleman* case and others for the proposition that recission will remain a political question and a question for the later Congress to decide.

I certainly don't think it is clear.

Mr. SALTZBURG. Congressman Butler, I guess I would have to concur with Ms. Wald's comment that the issue certainly would be unclear.

My initial reaction—to show you, I suppose, how untrustworthy initial reactions would be—would be as follows: That if as part of the joint resolution, setting forth the proposed amendment, the Congress provided that it should be ratified within, say, 4 years rather than 7

which has become a rather traditional number, I would have thought that 4 would be read to mean 4 and that the intent for those persons voting—the two-thirds of the Congress voting for that amendment would have been to say if it could not be ratified within 4 years then it shouldn't be ratified—we should either begin again or drop the issue.

If, as I understand, it is being debated whether a subsequent Congress could extend the period—in other words to extend the period of time for ratification beyond the exact period set forth in the joint resolution approved by Congress—and if the decision is yes the Congress could, yes the Congress has the power to do that under the Constitution, then I think there's probably no more reason why the Congress that could extend the period of time wouldn't be free to depart from any language anyone might care to put in concerning how ratification is to be accomplished and whether it is to be binding or not.

There are several different issues which probably ought to be separated. One is, I think, the question of what power Congress has if it chooses to exercise it. In light of *Coleman* v. *Miller* one could argue that that power is enormous.

However, it should be noted that in Coleman it is my recollection that no effort was made by the Congress that proposed the amendment to set forth details of ratification generally and to direct careful attention to a particular approach to ratification. No one in the proposing Congress focused on the issue whether once a State said yes could it say no later.

Were you to focus on a rule of thumb and write it into the resolution, there is an argument that Coleman wouldn't stand in the way of your binding a subsequent Congress. Again, I confess the issue cannot be resolved now with a sense of firm grounding in precedent. If you look at article V, however, it says rather clearly that the proposing Congress has ultimate authority to decide whether ratification should be by State legislature or by conventions in the States. Now, I find it difficult myself to believe that if the Congress that proposed the amendment, the Congress that had the two-thirds vote that put the amendment to the States, said "It shall be by convention" which has not been the usual case, a subsequent Congress could change the minds of the first Congress and say "No, you can do it either way."

It seems to me that there is a good argument that you should analogize any specific rule governing ratification to the Congressional power to choose between two for a ratification. Under this view a subsequent Congress viewing a ratification provision written into a joint resolution would follow that ratification provision. But, again, as far as the question of power goes it is open.

Now, what about the light history might shed, if any, on how you should go about judging ratification or policy not a power issue. I can't find very much light in the Constitutional Convention.

However, what I can find in the records of the Federal Convention leads me to believe that the framers probably—and I use that word "probably," which is a weasel word, intentionally—probably intended that there be one ratification without possibility of subsequent repudiation.

There are a number of arguments made in the debates, and I think the assumption was, as article V developed, that with respect to the very Constitution itself that started the Nation, that the States would

ratify and signal their ratification to the Congress and that would be the end. At the appropriate time it was assumed that the Congress would decide whether it had enough—nine States' ratification by convention were needed—to say the Constitution would take effect.

It seems to me that again this is not compelling; no one addressed our question specifically. But the assumption seemed to be that once the State signaled its ratification to the Congress that was the end, and that ratification might take some time.

Therefore, in terms not of power but of wisdom, it seems to me that because the Congress has all along followed the approach of the framers and has maintained a rather consistent provision, in terms of just pure political appropriateness, a pending amendment like the equal rights amendment ought to be treated like all past amendments, and no subsequent repudiations should be recognized.

Basically, I think the proponents of a pending amendment are entitled to rely on a consistent history, and that they are entitled to devote their energies in support of a pending amendment in those States that have not yet ratified. To turn the tables after the fact, I think, would be a real disservice to those people who voted for the amendment in the first place, and to those people who have pushed hard and long for its passage.

That is not to say for future amendments the Congress might not change the rule of the game by announcing that it was doing that. After all, the original ratification of the Constitution was by convention and today we are not fond of this approach to ratification. My guess is that despite the history and the consistent pattern that the Congress will be given broad power, should this ever reach a court, to adopt whatever view it wants in terms of ratification for the future. But the open question, as I've indicated, would be whether if one Congress attempts to bind a subsequent Congress, the court would permit that.

My own guess is yes, if it is done carefully enough. I may be in error on that. But certainly I think most people would agree that the Congress is quite free in one form or another to change the rules of the game.

My argument which would be on policy, more than constitutional grounds, is that it is only appropriate and fair to do that with respect to amendments in which people are on notice that the rules might be changed before the debate began.

Mr. MILLER. Just a brief comment. I find nothing really to disagree with either of my colleagues here, except that I would like Mr. Butler to make sure that I understand your question. It relates to something like this. Correct me if I'm wrong.

Does the position that you want to put in, or possibly put into a resolution for an amendment relate generally to the power of States to rescind or only specifically to the District of Columbia amendment? It would be two different questions, you see, in my judgment at least.

Mr. BUTLER. My question relates to both. The intention would be with reference to the District of Columbia resolution to insert somewhere in the resolution itself, prior to the body of the constitutional amendment where it says "If ratified by three-fourths of the States" which ratification may be rescinded prior to acceptance. I am thinking of language along that line. That is my first question—basically if

that is advisable, and does it have any implications for the equal rights amendment?

Second, if you do not think that is an appropriate approach, do you think a general statute in this area is indicated? That would be my general question.

Ms. WALD. May I add a word or two?

Mr. MILLER. I think it is a matter of judgment of the Congress. When we usually talk about Constitution we talk about power. Justice Frankfurter often said that we should never confuse the constitutionality with wisdom.

The fact that something is constitutional doesn't mean that it is wise. We are talking about power to do something. Advisability, I think, is the political judgment.

I would be happy to give you my judgment on whether or not something should be done, but that would not be anything other than as a resident of the District of Columbia.

I find it a little difficult, in my own mind, to clutter up, if I may say so, the problem of District representation with the problem of whether the equal rights amendment should become a part of the Constitution. I don't see, finally, the general statute by Congress with respect to ratification can be answered at this time based on any precedent I know of either in the historical debates or in any case that I am aware of.

I would agree with Ms. Wald and Professor Saltzburg. *Coleman* v. *Miller*—I think it had four opinions. There was a plurality opinion and it is usually cited for the position that it is a political question. Ratification and deratification is a political question. That's what is taught—at least the way I teach it in constitutional law and that's what it is usually cited for, even though there are a number of opinions in the case.

Ms. WALD. I just wanted to add one thought. In reading *Coleman* v. *Miller* in the last couple of days as homework, I did come across some language which addressed the ratification process. If my memory serves me correctly—the underlying idea in article V is that the requisite number of States will come together at roughly the same period of time.

Now, we can debate about what the reasonable period of time is, and who says what it is. But there must be a coming together, a consensus, among the requisite number within some kind of reasonable time framework and that will show the sufficient force to make a proposed amendment a part of the Constitution.

It does seem to me that that process is going to work. But it will be very difficult for it to work if every State has, regardless of who decides, whether it is Congress or the courts, if every State has the ability to ratify an amendment 1 year within that reasonable time period and rescind the next year, regardless of whether Congress or a court ultimately decides the issue. You are in a constant state of flux, if rescission is permitted.

It seems to me that it is much more workable, from the standpoint of the constitutional framework for an amendment within a reasonable time period, if the States are bound to their acts of ratification.

Now, Coleman also discusses the extreme situation where a State might ratify an amendment, but the amendment fails to become part

of the Constitution for 50 years, and conditions change since ratification, yet the amendment is still sitting there. Should the State be bound to that ratification 50 years later when the whole problem, the situation may have changed? *Coleman* doesn't answer the question, but it raises it. Indeed, the answer might be different in that case.

But it seems to me that as long as we are within a so-called reasonable time framework in which you try to bring a consensus of three-fourths of the States together, that it would be much more in keeping with the process, and I think, with political wisdom not to allow a constant going back and forth by State legislatures on the question of adoption.

Mr. BUTLER. I yield, Mr. Chairman.

Mr. EDWARDS. We welcome our colleague from the District of Columbia. Mr. Fauntroy, do you have any questions?

Mr. FAUNTROY. Thank you, Mr. Chairman. I simply want to raise a question with Mr. Butler about his figure of 39 being required for ratification if the District is to be added to the number of States required for ratification.

My calculations suggest that under the present arrangement of 50 States it comes to 38—the three-fourths figure being 37½. We round it off to the nearest 10th and that makes it 38. Where we add the District of Columbia, making it 51 States it would round off to 38¼.

Inasmuch as we generally in this country round off to the nearest tenth, I believe it would be 38. So, I fail to understand the suggestion that we break the tradition and round it off to 39. Generally I think we would round off to the nearest 10th.

Mr. BUTLER. You have my legal opinion and your theological opinion, and it is a mathematical question. So I would say that the gentleman has presented his argument very well, but my judgment is that three-fourths means that you have to have three-fourths. You cannot reach three-fourths without getting 39 States.

Mr. FAUNTROY. Let me assure you this is not a theological judgment. It is a matter of application of mathematical principles in determining percentages. If we do that it would break the tradition to go from 38.2 to 39. Well, it does not break the tradition, if it goes from 37.5 to 38, which is what we do now.

So, it is not even legal, it is a matter of mathematical practice. I simply wonder on the basis of that not on the legality or theology how you round it off to 39 rather than to 38.

Mr. MILLER. May I interject a comment here, sir. I think the Internal Revenue Service, at least on my tax returns, anything under 50 is rounded off to the lesser dollar amount and anything over 50 is rounded off to the higher dollar amount.

I would agree with Mr. Fauntroy on that opinion.

Mr. BUTLER. Are you serious?

Mr. MILLER. Pardon?

Mr. BUTLER. I cannot get the rest of the panel on that. I really didn't know that was a possibility. I had not thought about that before. I thought when three-fourths of the States were required, you had to get three-fourths of the States.

Mr. MILLER. Mr. Butler, I don't know how you can carve up a State into quarters.

Mr. BUTLER. Would the rest of the panel like to speak to that?

Mr. SALTZBURG. I would like to state my ignorance on the subject for the record. I would rather not make it appear that I am asleep.

It seems not unlikely to me that the three-quarters requirement of article V means you would have to get 38 and a quarter States and the only way that one could obviously do that is to have 39. That is, 38 would not do. It would not be a sufficient number.

The history of how the Congress has treated rounding off seems to me to be something that I gather none of us who are testifying is very familiar with.

That may be very significant, but, once again in terms of pure mathematics and strict language it seems to me every bit as arguable that an appropriate number would be 39 rather than 38.

Mr. MILLER. I would respectfully disagree. I simply don't understand my learned colleague's statement. If the Internal Revenue Service is willing to take that type of rounding off, I don't see why the Congress should not.

Mr. BUTLER. Well, certainly they have more power than we do.

Mr. MILLER. I know that on April 15 they certainly do. Yes, sir.

Ms. WALD. I would only add that I think this question too, just like the question of recission that we referred to earlier would probably be one of those ones to be decided by the Congress. Congress would decide whether the amendment had been ratified or not.

Mr. BUTLER. On that one point, though, *Coleman* v. *Miller* certainly does not say that the Congress of the United States can rewrite the map.

Ms. WALD. No.

Mr. BUTLER. The Congress of the United States cannot say that 27 is three-fourths of 50.

Ms. WALD. No. Absolutely not. I think the only thing *Coleman* v. *Miller* says is that Congress like everyone else is bound by the Constitution. It is just that Congress will make the decision rather than the courts. You are right, Congress is certainly bound.

Mr. BUTLER. Would it also be fair to say that the Department has not given any thought to this problem?

Ms. WALD. On the three-fourths question, that's correct.

Mr. EDWARDS. We are going to have to recess for 10 minutes again for a vote in the house.

[Recess.]

Mr. EDWARDS. The subcommittee will come to order. When we recessed, Mr. Fauntroy had the floor.

Mr. FAUNTROY. Mr. Chairman, I simply wanted to reiterate my concern about how we round off to the nearest tenth and I will trust—I will turn over the balance of my time and in the meantime search the Constitution for a previous amendment process to determine whether or not there was rounding off involved.

Mr. MILLER. Mr. Chairman, may I supplement my previous remarks. I think, if we refer back to the ratification of the original Constitution, you will find that the requirement in the Constitution is that the ratification was to be done by the same way as amendments. At least, as I read it.

"Ratification of convention of nine States shall be sufficient for the establishment of this Constitution." So ratifying the same it seems to me that three-fourths of the 13 at that time was 9.75. I'm not quite

sure what relevance that has at the present time—of the original ratification. But certainly if the Founding Fathers considered that less than three-fourths was alright—because three-fourths of 13 is 9.75, as I calculate it.

They considered that nine States was sufficient to ratify the original Constitution.

Mr. SALTZBURG. That may be a problem with that, Mr. Chairman. And that is the reason all of us are hesitant to come to any position on this problem. Only 12 States signed the document which provided that the ratification of the Constitution would be by three-quarters of the States. And while we have all learned that there were 13 States originally it is not clear whether the three-quarters meant three-quarters of 13, in which case the number would be 9.75, or three-quarters of 12 in which case 9 would be perfect.

If I may add one other point. There is just a page number that you might find useful at some point; it relates to an issue that has been touched upon this morning. On page 556 of Farrand's Records of the Federal Convention there is language to which I referred earlier without citation which seems to me to make it quite clear that in terms of the Original Constitution that the framers intended that States would have a period to consider whether to adopt the Constitution. But once they did, once they approved it, that approval would be binding and conclusive upon them.

I'm not saying that this deprives Congress in the future of the ability to change. I don't think that at all. But it does seem to me that the roots of our current treatment, which is that we should recognize only a ratification but no subsequent repudiation may very well be in the roots of our own Constitution. At some point in making policy rather than constitutional law the subcommittee or the entire committee, perhaps the entire House, might be interested in looking at those portions of the record of the Federal Convention.

Mr. EDWARDS. Yesterday a witness noted the only precedent we have on the subject of rescission is from the ratification of the 14th amendment. Do all of the witnesses agree that the 14 amendment certification is the most significant precedent as to the rescission question?

Mr. MILLER. Well, that was the attempt in *Coleman* v. *Miller*, sir. That was on the child labor amendment, however. It's not the 14th amendment. The proposed child labor amendment. The court said it was a political question.

There is a case somewhere in the fifties in the Federal district court in Tennessee, as I recall it, in which the argument was made that the 14th amendment was improperly in the Constitution because it was improperly ratified by some States and the district judge summarily dismissed that argument.

Mr. EDWARDS. Thank you. Let's assume that House Joint Resolution 554 passes in the House and in the Senate with the 7-year statutory period for ratification set forth in the resolving clause let us suppose that 5 years after the amendment has been submitted to the States, the Congress wishes to extend the ratification an additional 2 years, that is to 9 years. Could that be done by statute?

Mr. SALTZBURG. Mr. Chairman, I would like to duck that question.

Mr. BUTLER. That is a purely hypothetical question.

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Mr. SALTZBURG. My candid answer is—that there is no legal authority that would adequately answer that question. The best argument, I think, that can be made and one I would accept is that since Congress in putting forth a constitutional amendment and in choosing language has a right to choose under article V between legislative approval by the States or a convention mode of approval and having the authority over a number of years, Congress when it selects other specific language like the number of years ratification, can bind everyone else and I would be reluctant to see the number of years chosen be deemed to be irrelevant for most purposes which would be the case if a subsequent Congress could simply extend the period or perhaps cut it back, which would even be worse in my view. Maybe the cutting back is more troublesome than anything else.

I realize that the obvious question is the following one: What if there were two-thirds of the Congress voting for the extension? I still am troubled by the thought of overriding the choice of the proposing Congress. The proposing Congress reached a consensus to get the required two-thirds vote; it agreed on a compromise. Part of the compromise was a certain number of years. But for that compromise, but for that agreement, the rest of the amendment might never have been proposed to the States.

To go back on the compromise threatens to distort the political process somewhat but I suppose that is a judgment that those of you with experience in Congress would be far more able to make than I.

Mr. EDWARDS. Ms. Wald.

Ms. WALD. Mr. Chairman, as an administration witness I would have to say that I cannot give you an administration position because there is one under study at the present time. I think if the opportunity presents itself that position would certainly be made clear to the relevant committees and subcommittees of Congress, and transmitted to you.

I think, like some of the other questions we discussed here, it is a difficult one. And, if I may just make a few personal observations without suggesting that they represent the Administration's position. It would seem to me that we must start from the premise that Congress has the power under *Coleman* v. *Miller* to declare what shall be a reasonable period of time in which the amendatory process may take place.

And to add that to the general theory which I espoused earlier, I think the core of the amendatory process is that at a certain point in time a sufficient number of States comes together and approves of an amendment. I think my personal view would be that less than a strong case can be made out that at the end of whatever initial period of time Congress may have set, the amendment self-destructs.

It seems to me that evaluating the constitutionality of the extension of a ratification deadline would be a much more subtle process, involving questions of whether or not you were still within a reasonable time period and whether the requisite number of States had approved the amendment within that reasonable time period, rather than whether or not the initial period set out had ended and therefore had terminated the possibility of amendment.

I hope you will take those as informal comments and await a more formal opinion.

Mr. MILLER. Just a brief comment. I have nothing really to disagree with the other panelists. I would like to suggest, however, that the answer to that question may well turn on the willingness of the Supreme Court to accept the principle of *Coleman* v. *Miller* or not.

If it continues to call this question a political question then I think it is up to Congress to do that which it wishes. I would not want to predict on that basis, because the Court has changed completely and because the Court originally in the *Coleman* case was so split.

So, technically, I think the answer would have to come from the courts and I don't know that you can predict at this time what the Supreme Court would do.

Mr. BUTLER. On this point, Mr. Chairman, is there a procedure where we could get judicial clarification of these cloudy questions before the crisis arises, or do you have any suggestions?

Mr. MILLER. No, you can't, sir. That would be an advisory opinion. Since President George Washington the court does not issue a formal advisory opinion. You can get clarifications from the Attorney General or from your own staff and so on.

Mr. BUTLER. Do the other panelists agree that we are stuck with this problem should it arise?

Ms. WALD. Yes. In fact, I might go one step further and throw some doubt on Professor Miller's idea that any Supreme Court would ever decide this. I think there is a real possibility that under the *Coleman* v. *Miller* political question analysis even if you went ahead and got the extension and at the time that ratification was declared some people said "No, no, it's not valid. We won't ratify it. We won't operate pursuant to it," even then the courts would refuse to take it and would simply say that it was still a congressional decision.

Mr. EDWARDS. Mr. Drinan.

Mr. DRINAN. Thank you, Mr. Chairman. Professor Miller, I am always intrigued by the opposition to congressional power, by a simple majority, to turn the District into a State. It would be wonderful on this rainy Thursday morning to believe that that is free of difficulties. You know the difficulties better than I.

How do you answer what Ms. Wald has said, namely, that this can't be done because in the Constitution the Congress is given exclusive power over this District of Columbia.

Mr. MILLER. Well, "exclusive" to me, sir, has a rather definite meaning. Exclusive means exclusive—you can dispose of any territory or property of the United States in any way you want. You can, for that matter, sell the Virgin Islands, for example, back to Denmark, if you wish to do so—if Congress wished to do so. There's no question in my mind about that.

Exclusive jurisdiction, or exclusive legislation seems to me to go to the question of jurisdiction. As Mr. Justice Holmes always said, jurisdiction means power and power means that you do with that what you wish. I'm not saying that you should do it, I'm just saying that you can do it.

That, I think, is the judgment of the Congress, both Houses of the Congress, for it to do whatever it wishes.

Now, if you would like me to comment if the District should become the 51st State, that's a different question in many respects. The problem of another State is a troubling one to me.

I would say this, however, that since the population of the District is to my knowledge higher than 10 of the present States, on a pure population basis I see no reason whatsoever——

Mr. DRINAN. Professor Miller, suppose we just did it. Suppose Congress passed by majority vote a resolution making the District of Columbia the 51st State and the President signed it. Who could challenge it? I mean, what might happen?

Mr. MILLER. I don't see—I think anyone can try to challenge it, sir. It would be my offhand opinion, my considered opinion, really. Let me put it stronger.

It is my considered opinion that the court would not accept a case on that basis.

Mr. DRINAN. Ms. Wald, how do you respond? You have one argument against alternative 1, namely, that the Constitution says that the Congress shall exercise exclusive jurisdiction. How do you respond to Professor Miller?

Ms. WALD. Well, my response is that article I of the Constitution clearly sets up three different levels of government. That is the Federal Government, the State, and it takes cognizance of a third kind of governmental unit—the District of Columbia.

I think the history of that article which was referred to earlier by Professor Saltzburg evidences the intent of the Founders to have a District for the seat of the Government which would be under the control of Congress. At that time they were worried about problems of protection in the States——

Mr. DRINAN. Well, I know, but how do you respond to the real argument? That's obsolete. That was a historical accident because of the riot in Philadelphia. It really shouldn't be binding 200 years later. There is Federal property everywhere, including my congressional district.

Isn't that an obsolete argument?

Ms. WALD. I don't think anything in the Constitution is obsolete.

Mr. DRINAN. I didn't say that. That is the interpretation you are putting on it. The first amendment says that there shall be no establishment of religion but you know how the Supreme Court has interpreted that.

Shouldn't we interpret that phrase in the light of the situation today and say that the District of Columbia is just as entitled as Hawaii and Alaska to be a State?

Ms. WALD. I believe, Congressman Drinan, that because it is in the Constitution it can only be changed by amendment. I think a reasonable interpretation even in light of the present-day circumstances which indeed have changed is that there may still be reasons to maintain a Federal city here and that if we are going to change what appears to me to be the plain meaning of the original Founders to set that up in the Constitution we can do it, but I believe only by constitutional means.

Just as many other amendments, or many other parts of the Constitution may seem obsolete in light of present day circumstances, I still would maintain a very conservative posture of amending them under the procedures that the Constitution itself provides, rather than trying to change them or interpret them.

Mr. DRINAN. Well, Ms. Wald, if Congress passed this by majority, would the President sign it?

Ms. WALD. I don't know the answer to that. I'm sorry.

Mr. DRINAN. Do you have any thoughts on this profound question this morning? You see, I'm trying to cop out on this Thursday morning and this seems so simple.

Mr. SALTZBURG. Earlier I indicated that I shared your view and Professor Miller's view that as to article I, section 8, I don't think there is a serious problem in terms of the Congress deciding to make the District a State.

I believe Ms. Wald is correct in terms of perhaps one reading of the intent of the framers. But there is some question as to whether there is any indication in the Constitution that that intent was to bind us forever.

Mr. DRINAN. So, you would be opposed to our making the District of Columbia a State?

Mr. SALTZBURG. No. In fact I think of a more serious problem. A difficulty you would have to deal with is the 23d amendment. It seems to me if you made the District a State there are provisions with respect to the electoral college in which you would have to do something with the 23d amendment to avoid some problem of interpretation.

If that meant repealing the 23d amendment, you are going to go through the constitutional amendment route anyway. If it meant just compromising and saying, "We will leave a little confusion in and work with it," some people may have some problems with neatness. In terms of sheer congressional power I find it, I guess, difficult to imagine a court—which I suppose is the ultimate threat to any legislation—striking down legislation that made the District a State.

Mr. DRINAN. If we came to the conclusion that we don't have the two-thirds in the House and in the Senate for a passage of an amendment, would you recommend that we get a majority to make it a State?

Mr. SALTZBURG. Having taken some bold positions in areas I probably shouldn't have this is one time when I would say that I really don't know. That seems to me——

Mr. DRINAN. What?

Mr. SALTZBURG. I don't know. That seems to me——

Mr. DRINAN. You don't know?

Mr. SALTZBURG. Of should you do it.

Mr. DRINAN. You are being paid as a consultant by the subcommittee.

Mr. SALTZBURG. Well, yes, not paid, but a consultant.

Mr. DRINAN. Yes or no?

Mr. SALTZBURG. My vote would be no.

Mr. DRINAN. All right. I'm sorry, but——

[Laughter.]

Mr. MILLER. Let me correct just one thing, Mr. Congressman. We are not being paid a nickel. I paid a buck and a quarter to get up here this morning.

Mr. FAUNTROY. Would the gentleman yield. I would just like to ask any one of the panel, the constitutional arguments aside, what would be your assessment of the fiscal liability to the District of Columbia with the boundaries set—with the end boundaries set to function as a State given 50 percent of the taxable land within the boundaries of

the District of Columbia being taken off the tax roles at this time by the Federal action?

Do you think we could survive as an entity?

Mr. MILLER. I am a resident and domiciled in the District, Mr. Fauntroy. If I may answer that briefly. I just paid my tax bill for the entire year. It was a whopping sum. My real estate tax bill. It would be my judgment that the city of Washington could not survive without continuing flow of Federal funds.

It would be my recommendation that Congress not do the annual thing of appropriations, or whatever it is, every 2 years or whatever they do. Have a continuing authorization for a certain sum keyed to the cost of living index or the inflation index or whatever it is. The appropriations, then, are well nigh automatic. You have something similar now—you know, Congress sets up various types of funds.

One fund that they send up is the highway trust fund by which moneys are sent out every year, billions of dollars are sent out every year. Congress never appropriates it every year.

You have methods of doing this. I think you need a continuing statute to do it that way. I think as a resident of the District I find it somewhat disturbing for the District to come hat in hand to the Congress every year for this. I think Congress should pay and pay substantially. The Federal Treasury should pay, I should say, and pay substantially for a sum to the city of Washington whether or not it becomes a State, whether or not we get representation.

Mr. FAUNTROY. Would there be a constitutional problem paying to one of 51 States a Federal payment and not to the other States?

Mr. MILLER. We do it all the time. I don't see any problems. I mean, you do it every time you enact a statute. As a contract let to, say, McDonnell Douglas in California—that's a payment in the State of California. You can do it the same way. You can make a payment to the State of California just as well. I don't see any problem.

Mr. DRINAN. Mr. Chairman, I want to thank the witnesses for coming. They have been very illuminating. I'm sure they will continue to be very helpful as we proceed in the markup for this matter. Thank you.

Mr. EDWARDS. Who would set district lines for representation in the House for the residents of the District of Columbia?

Ms. WALD. Mr. Chairman, I would assume that the District of Columbia City Council, under the Home Rule Act and the present home rule legislation would be the logical place to impose that power. I think House Joint Resolutions 554 and 565 would, with a minor amendment, allow Congress to put that power into the City Council.

I think that is the logical place for it to go and that would most nearly equate it with the situation in other States. I believe that under the Home Rule Act the City Council determines qualifications of voters and other matters pertaining to Federal elections. That would be the place where I would go.

Mr. BUTLER. Would you yield? There is not any question about the ultimately reserved power in the Congress to decide.

Ms. WALD. Yes.

Mr. BUTLER. If Congress chose to do the redistricting——

Ms. WALD. Right. Right. I understand that. Of course, I'm sorry if I didn't made it clear, but I was talking about where I thought those

powers should be placed. I would assume or would certainly advocate that Congress would allow this since it is familiar with the constitutional provisions.

Mr. MILLER. May I drop a caveat to that, sir. Congress is still subject to the doctrine of *Wesberry* v. *Sanders* with respect to apportionment in the election of representatives to Congress.

The *Wesberry* case is a 1964 case on representation, on how you carve up the districts within a given State. Congress is still subject to that.

Mr. BUTLER. While we are on that point, of course, it has been an argument against District representation. With the disproportionate numbers of residents in the District who are not in fact domiciliaries of the District, many people in the Federal establishment maintain their voting residence elsewhere.

Do you see any accommodation being necessary in the reapportionment or allocation of representation if this amendment passes? I will pass that on to the panel.

Mr. MILLER. Do you have some figures, sir, on how many people are actually not domiciled in a legal sense?

Mr. BUTLER. Do I have some figures? I have seen some. I do not have them with me.

Mr. MILLER. I think it would be critical to know exactly the number of people who are residents but who are not domiciled in a legal sense. That might be a critical part of that question, if I may say so, sir.

Mr. BUTLER. I am sure it is.

Ms. WALD. I believe that I saw some figures along those lines in the hearings and the reports of this or another committee in prior years. I would think that in setting out the qualifications of the voters the D.C. authorities would, by delegation, be able to take into account the question of whether people maintained voting residence in the District or were domiciled in other places.

It probably would be taken into account.

Mr. BUTLER. Well, the ultimate resolution to this—as to how we are going to allocate—is in Congress, of course. We have to deal fairly with all States.

Could Congress come to the conclusion in a marginal situation that the District of Columbia, having slightly more than the entitlement for one elected representative, shall not have two because of the large number of people who are not domiciliaries? Could we do that fairly? It would not be real fair, but could we do that without violating the Constitution? What discretion does Congress have in that particular area?

It would be in effect applying one rule to the District of Columbia and another rule to the rest of the States. Do you think Congress has that kind of discretion?

Mr. MILLER. You have no discretion on the minimum number of representatives.

Mr. BUTLER. One.

Mr. MILLER. One. That's right. The question is if you can go beyond that. I know of nothing in the Supreme Court cases that bears on that question. I really cannot see a constitutional problem here in the sense of saying that there is an equal number of people in, say, Maine or

South Dakota necessary for representatives. I don't know the representation of those States.

I imagine that there is a variation at the present time. There must be. There has to be at the present time. There has been no case, to my knowledge, on it.

Ms. WALD. No, I don't know of any case. I would caution before any such attempt is made that Congress should have a very sound basis for deciding that in fact there is a significantly greater number of nondomiciled residents in the District than in other States.

Mr. BUTLER. In one case there was testimony that there were 200,000 inhabitants in the District eligible to vote elsewhere. That is the Carolina voters—you were not a witness, were you, Mr. Fauntroy?

Mr. FAUNTROY. No, I was not. But of that number only 50,000 elected to vote elsewhere.

Mr. BUTLER. Well, I have caught you by unfair surprise.

Mr. MILLER. The matter of who is eligible to vote, Mr. Congressman, is a matter up to each State. In the State of Virginia——

Mr. BUTLER. It was prior to the Overseas Voting Act.

Mr. MILLER. No. I'm speaking generally up to the State of Virginia, the State of Massachusetts, and so forth—the eligibility—a person might retain eligibility; he might not even be working for the Government and vote absentee. He's here temporarily in the District. That's up to the State, let's say, Texas, if they are going to permit a person to vote.

I'm originally from California. If California wanted to permit me as a resident of the District to vote absentee, I think it is entirely up to the State of California.

Now, what the Congress does with respect to the District is a different question also, it seems to me. It is a State matter of who is entitled to vote.

Mr. BUTLER. If we wind up with 600,000 people in the District of Columbia and the margin for one representative is 500,000 and we have 600,000 people in the State of Maine, would not Maine get two?

But, would the District of Columbia be treated just like Maine if the District of Columbia has a disproportionate number of people who are domiciled elsewhere?

Mr. MILLER. Mr. Congressman, in all fairness to everyone else concerned, I think that if you are going to ask who is domiciled here and who is resident you had better ask it of the people in every State. There are a lot of people traveling around. It is my understanding that at least 25 percent of the people move every year in this country. We are a very mobile society.

Mr. BUTLER. I am not arguing the fact. I am just assuming that those would be the facts.

Mr. MILLER. If you can determine the facts. But I think you would have to determine how many people are residents of Maine who are not domiciled there in a legal sense.

Mr. BUTLER. Mr. Saltzburg.

Mr. SALTZBURG. Congressman Butler, I share the opinion of Professor Miller and I think Ms. Wald's also, that probably there is not very much in the way of constitutional law that would say that Congress couldn't do the kind of thing you are suggesting.

One point is obvious, however, probably so obvious no one needs to make it. That is, that while it may be true that there are a large number of people who reside in the District and vote elsewhere that one reason they may vote elsewhere is because the District has no voting representation in Congress.

That problem may disappear. One would think that the inclination of people would be to vote where they live. Personally I can see little advantage in retaining your vote at home when you are here and you want to vote in terms of things that really matter.

There is another question that ought to be raised also. It is not a constitutional question but sort of a legal question and certainly a very practical political question. That is that even if people do retain their voting rights elsewhere, if they are domiciled in the District the question would be "Shouldn't the District, if it had voting representatives in Congress be authorized to speak for those people residing but not voting in the District as well given the impact on them of legislation?"

Before you exercise the power you may have to treat one particular entity differently from others you might want to consider other related matters—for example some States have voting percentages much lower than others of similar size. We don't worry about that now—the voting percentages that is—we just assign Representatives proportionately.

There are a lot of questions, I think, one would have to take up. It would be very complicated. The bottom line is, I suppose, you may have the power—yet one would hope the problem would go away and that Congress could get on to perhaps even more troublesome but even more fundamental problems.

Mr. BUTLER. I think you are right. I do not think Congress would have the temerity to adopt a different standard for the District.

Mr. EDWARDS. I would presume that Congress, by law, would establish a procedure for filling a vacancy in the Senate. Ms. Davis.

Ms. DAVIS. I have one question which I address to the entire panel. There are those who would support voting representation in the House. They would not support voting representation in the Senate; on the grounds that there are constitutional impediments to such representation.

Could you cite the constitutional provisions which could be raised and discuss the merits of those arguments.

Mr. SALTZBURG. Counsel, in my statement I try to address at length that provision of the Constitution—the last sentence of article V which provides that no States without their consent shall be denied equal suffrage in the Senate.

It seems to me that's the argument that has been made—that is, that somehow that if the District, a non-State, were allowed to have voting representation in the Senate, that somehow a State would be able to raise the claim of a violation of article V.

Now, I should indicate that I assume in my prepared statement that someone could challenge this in court, that we would even have to worry about the challenge. I'm not too sure of that assumption—it is not one that anyone has to make. It is arguable that article V would be like many parts of the Constitution, totally up to Congress to interpret and that no court would stand in the way.

The reason I made the assumption I did is not that I think a court would necessarily entertain a challenge but I was assuming that this

committee and the Congress would want to get the best answer under the Constitution it could.

When I went back into the legislative history of the Constitution, the debates, I could find very little to explain the particular language in article V. The most I could find was that during the debates on the Virginia plan, often called the large State plan and the New Jersey plan, often called the small State plan—the small States were very concerned that immediatey after the Constitution was ratified the larger States wouldn't get it amended so that the smaller ones would lose the benefits of their compromise.

One of the clear meanings of article V, I think, is that no States are to gang up on others in the the Senate and try to push through a constitutional amendment that would provide proportional representation according to population as the order of the day in both Houses.

In terms of the Senate itself I really cannot see the argument that has been made in the context we are considering. People cite the language as if it were clear. If you made Puerto Rico or the District itself a State that would mean that two more votes would be registered in the Senate. It is absolutely of no consequence that the District is not denominated a State, the position of Massachusetts or the position of Virginia or the position of California would remain identical whether the District is given two votes or a new State like Puerto Rico is given two votes.

In terms of the language of article V it seems to me you stretch it—not you, but the people who make the argument that it stands in the way of voting representation—stretch the language without reason.

In terms of the policy—I think the policy does not bar the District from representation. In terms of the history, it seems to me the history is sparse but what is there does not indicate that Congress doesn't have power to do this.

I guess the long and the short of it is that it looks as though that the argument is—or, rests, I should say, on a constitutional provision because it is the best that's available for people who need an argument.

I believe that it is without merit.

Mr. BUTLER. I think you used the word "nonsense" in your statement.

Ms. WALD. Let me just use a bizarre example. It seems to me that if the District were allowed its two Senators, then I would agree wholeheartedly with Professor Saltzburg's argument. The only kind of case that I can see where that clause of article V would come into play would be if, for instance, you attempted a constitutional amendment which let the District have five votes in the Senate, rather than two. It seems to me that's what the proviso is there to prevent.

And then that would raise an additional question which we don't have to get into, and that is whether there is anything that's unamendable in the Constitution itself. Some people have suggested that this clause is unamendable. Others have said nothing is unamendable in the Constitution.

But it seems to me that would be the only kind of situation to which the "equal suffrage" proviso applies. If you tried bringing the District or some territories in with three, four, five—a different number of votes than the States have, then it would be violated. But while you keep each State standing on an equal footing, you don't violate that.

Mr. MILLER. I would concur with both of these statements. I think the argument is not worth serious attention, Mr. Chairman.

Mr. EDWARDS. Thank you. Mr. Starek.

Mr. STAREK. Professor Saltzburg, in your remarks you indicated that you had some difficulty with section 2 of House Joint Resolution 554, particularly the final clause.

I notice in the Department of Justice's statement they suggested an amendment to that particular language adding the words "In such manner as shall be provided by the Congress." I wondered if the panel could comment a little further beyond what Ms. Wald has said in her statement about the effects of amending the resolution by adding that language.

Mr. MILLER. I'm not sure about the question. Would you clarify it a bit?

Mr. STAREK. I am just curious about your thoughts on the language which is found on page 15 of Ms. Wald's statement. She indicates that in section 2 of House Joint Resolution 554, the Department would recommend that there be an amendment adding three words "In such manner" in section 2 of House Joint Resolution 554. I wonder if that would have any effect? What are your thoughts on it?

Mr. MILLER. May I ask for a clarification from the person who wrote the document.

Ms. WALD. I'll try. I think that we simply wanted to make sure that there was no question that the amendment recognized that it is the responsibility of Congress as it were under the existing parts of the Constitution to provide the mechanism by which these votes and the elections would take place.

But we also thought that the intent of the resolution in its present form is to show that while Congress has this residual power, it would put the power into the people, as it were into the District government.

It is simply, I think, a tidying up kind of thing with the phrase "and as shall be provided by Congress in such manner" indicating that Congress would have the right to make that choice.

Mr. MILLER. With due respect to Ms. Wald, I don't know that the language adds to the present language. It seems to me to be redundant.

Ms. WALD. Well, it would be in lieu of, not in addition to, the existing language.

Mr. MILLER. In "such manner as shall be"?

Ms. WALD. The language is modeled actually after the 23d amendment.

Mr. MILLER. You want to add "in such manner" before "as shall be." Is that what you are saying here?

Ms. WALD. It will read "The exercise of the rights and powers conferred under this article shall be by the people of the District constituting the seat of government, in such manner as shall be provided by the Congress." That is in lieu of "and as shall be provided by the Congress."

Mr. MILLER. I don't find any clarification of this language, sir, and I think either way it would go, if it is adopted, it would be handled in the same way.

Mr. STAREK. Professor Saltzburg, does that suggested language help solve your problem with spelling out the problems of Congress?

Mr. SALTZBURG. Yes and no. I do think that the change that Ms. Wald suggests would be a very useful change.

I think it is helpful. To me it clarifies an ambiguity that I see. There is still an ambiguity that remains, and I don't mean to be overly technical, but I just raise it because I believe you would rather have it raised here even if it is frivolous. I don't believe it is, however.

Section 2 still provides, as amended, as I understand it, that the exercise of the rights and powers referred to in the resolution shall be by the people in such manner as provided by the Congress.

Now, section 1 provides that the District shall be treated as though it were a State for purposes of article 5. Assume for the moment this simple case, assume that a constitutional amendment is proposed after the District has been successful in achieving ratification of Resolution 554. Let's also assume that the Congress is now deciding how the District should be viewed in terms of ratification process.

Well, one option would be to have all States and the District—do ratification by convention. The Congress has preferred to do it that way and for very good reasons. If Congress rejects conventions on the ground that they are generally impracticable the next question would be whether Congress is prepared to treat the current District of Columbia government, the legislative body of the District of Columbia like a legislative body? Unless you have full home rule it seems to me that there may be reason to say no. If so, Congress might say "Well, under section 2 we have other options because the language says 'in such manner as provided by the Congress.'" So maybe Congress might say "In the District we will put it to a vote of the people."

The problem with that is that section 1 says that you are going to treat the District like States for the purposes of article V. The Congress could not use a referendum in any State as a way of ratifying an amendment. Which section, 1 or 2, would govern? I am unsure.

So it seems to me that a problem does remain. A related problem is whether Congress would be in a position to say that a referendum in the District could be done once only while leaving the States multiple opportunties to consider amendments. Is that consistent with section 1 that says "the District shall be treated as a State."

I don't suggest to you that this problem is insurmountable, just that it is one that ought to be thought about. I find myself sort of in a way between a rock and a hard place; as one who favors an amendment to the Constitution on the subject in some fashion, I would hardly press any objection to 554 as being a serious one.

I think that it could be reworded and everything would work out fine.

There is something, I think, to consider and that is when one puts forth a constitutional amendment and sends it out for debate in the various States, I think that Professor Wright's statement indicates that it is very helpful if the language of the amendment can be as clear as possible for the people as to what is really being accomplished.

I suppose the—the bottom line after you amend, if you amend 554—the bottom line, in my view between it and the proposed changes that I would like to see in 139 really involves few, if any, substantive differences at all.

Perhaps the major difference in 139 as I envision it is, that—a couple of problems would be addressed specifically in the amendment, hopefully without making it too controversial.

And, its section 1 might make it clearer to the average citizen debating the amendment exactly what is being proposed.

I don't suggest that the average intelligent citizen would have grave problems in section 1 of 554, which is indeed shorter. It seems to me overall that maybe a little more specificity such as you could have in 139 might be desirable. But I would sooner bow to any version of 554 than argue that we ought not to move forward. I think that language could easily be agreed upon—no matter which version you use—that could solve all these problems.

Mr. MILLER. The only other comment I would make, Mr. Congressman, is this. No amendment, no Constitution, no statute, is going to solve all the problems or any one particular problem.

If Congress waits to solve all the problems in one particular enactment it's never going to do anything. I think that I would respectfully disagree with Professor Saltzburg and Ms. Wald. I don't think that this is a major problem—the language in this second section of 554.

Ms. WALD. I think we both think it is a minor problem.

Mr. FAUNTROY. Mr. Chairman, before we close may I just indicate that I have now reviewed the 26 amendments which have been ratified and find that in only one instance would there have been an opportunity to round off to the nearest tenth and to the lower number.

That would have been on the 11th amendment to the Constitution, a time when there were 15 States and the number required for ratification at that time was 12.

I just want to concede to the point that based on this precedent the number would rise to 39.

Mr. BUTLER. Thank you very much. I would anticipate the District of Columbia would ratify the equal rights amendment more quickly than other States up to now, I think.

I am authorized by the Chairman to thank the panel for your presence and your contribution which has been most helpful and very enlightening. We anticipate the subcommittee would be moved promptly to consider the resolutions now before us.

Your contribution is appreciated.

[Whereupon, at 11:45 a.m., the hearing was adjourned.]

"ARTICLE—

"SECTION 1. The people of the District constituting the seat of government of the United States shall elect two Senators and the number of Representatives in Congress to which the District would be entitled if it were a State. Each Senator or Representative so elected shall be an inhabitant of the District and shall posesss the same qualifications as to age and citizenship and have the same rights, privileges, and obligations as a Senator or Representative from a State.

"SEC. 2. When vacancies happen in the representation of the District in either the Senate or the House of Representatives, the people of the District shall fill such vacancies by election.

"SEC. 3. This article shall have no effect on the provision made in the twenty-third article of amendment of the Constitution for determining the number of electors for President and Vice President to be appointed for the District. Each Representative or Senator from the District shall be entitled to participate in the choosing of the President or Vice President in the House of Representatives or Senate under the twelfth article of amendment as if the District were a State.

"SEC. 4. The Congress shall have power to enforce this article by appropriate legislation.".

95TH CONGRESS
1ST SESSION

H. J. RES. 392

IN THE HOUSE OF REPRESENTATIVES

APRIL 19, 1977

Mr. HAMILTON introduced the following joint resolution; which was referred to the Committee on the Judiciary

JOINT RESOLUTION

To amend the Constitution to provide for representation of the District of Columbia in the Congress.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:

I

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"ARTICLE —

"SECTION 1. The people of the District constituting the seat of government of the United States shall elect two Senators and the number of Representatives in Congress to which the District would be entitled if it were a State. Each Senator or Representative so elected shall be an inhabitant of the District and shall possess the same qualifications as to age and citizenship and have the same rights, privileges, and obligations as a Senator or Representative from a State.

"SEC. 2. When vacancies happen in the representation of the District in either the Senate or the House of Representatives, the people of the District shall fill such vacancies by election, except that if the Congress provides for a legislature for the District elected by the people and an executive for the District elected by the people, the legislature may empower the executive to make temporary appointments to fill vacancies in the representation of the District in the Senate until the people fill the vacancies by election as the legislature may direct.

"SEC. 3. This article shall have no effect on the provision made in the twenty-third article of amendment of the Constitution for determining the number of electors for President and Vice President to be appointed for the District. Each Representative or Senator from the District shall be entitled to participate in the choosing of the President or Vice Presi-

dent in the House of Representatives or Senate under the twelfth article of amendment as if the District were a State.

"SEC. 4. The Congress shall have power to enforce this article by appropriate legislation.".

95TH CONGRESS
1ST SESSION

H. J. RES. 554

IN THE HOUSE OF REPRESENTATIVES

JULY 25, 1977

Mr. EDWARDS of California introduced the following joint resolution; which was referred to the Committee on the Judiciary

JOINT RESOLUTION

To amend the Constitution to provide for representation of the District of Columbia in the Congress.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:

I

"ARTICLE —

"SECTION 1. For purposes of representation in the Congress, election of the President and Vice President, and article V of this Constitution, the District constituting the seat of government of the United States shall be treated as though it were a State.

"SEC. 2. The exercise of the rights and powers conferred under this article shall be by the people of the District constituting the seat of government, and as shall be provided by the Congress.

"SEC. 3. The twenty-third article of amendment to the Constitution of the United States is hereby repealed.".

APPENDIX 2

CONGRESSIONAL REPRESENTATION FOR THE DISTRICT OF COLUMBIA: A CONSTITUTIONAL ANALYSIS

PETER RAVEN-HANSEN*

Introduction

At the end of a decade marked by congressional and judicial activism in extending the franchise, it seems to many ironic that Congress and the Supreme Court should sit amidst several hundred thousand American citizens who are denied representation in the national legislature. Efforts to gain congressional representation for the District of Columbia have been made intermittently since 1803,[1] but always without success. While other reasons for their failure have been advanced,[2] the principal factor perpetuating the District's non-representation over the years has been the inaccessibility of the sole apparent remedy: constitutional amendment.

Proponents and opponents alike have assumed that District representation requires a constitutional amendment.[3] The con-

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*Member of the Massachusetts Bar. A.B., 1968, J.D., 1974, Harvard University.

1 *See* 12 ANNALS OF CONG. 502-05 (1803); Library of Congress Legislative Reference Service, *Proposed Amendments to the Constitution of the United States for National Representation for the District of Columbia*, in *Hearings on S.J. Res. 136 Before a Subcomm. of the Senate Comm. on the Judiciary*, 83d Cong., 2d Sess. 4 (1954). A recent attempt to tack a District representation provision onto the bill for the eighteen-year-old voting amendment failed, notwithstanding the support of Senate liberals and the apparent blessing of President Nixon. *See* 117 CONG. REC. 5310 (1971); MESSAGE FROM THE PRESIDENT, H.R. DOC. No. 91-108, 91st Cong., 1st Sess. (1969).

2 Some have suggested that opposition to D.C. representation may be motivated by covert racial prejudice. *See* 117 CONG. REC. 5338 (1971) (remarks of Senator Kennedy). More apparent is the lack of congressional enthusiasm for District concerns, since therein lie no political benefits for congressmen. *See* 116 CONG. REC. 8037 (1970) (remarks of Representative Nelson).

3 *See, e.g., Hearings on H.J. Res. 396 Before the House Comm. on the Judiciary*, 90th Cong., 1st Sess., ser. 6, at 95 (testimony of Ramsey Clark) & 156 (testimony of Sturgis Warner) (1967); *Hearings on H.J. Res. 529 Before Subcomm. No. 5 of the House Comm. on the Judiciary*, 86th Cong., 2d Sess., ser. 18, at 128 (statement of Senator Jennings Randolph) (1960).

ventional analysis argues that the Constitution grants seats in Congress only to states, so the District, not being a state, is not entitled to representation.[4] Article I, section 2 states that the House "shall be composed of Members chosen . . . by the People of the Several States,"[5] and the Senate "composed of two Senators from each State."[6] The electoral machinery for filling and allocating congressional seats is also established exclusively through the states.[7] Moreover, clause 17 of article I, section 8 vests in Congress exclusive legislative authority over the District. *Ipse dixit*, it is said that continued District disfranchisement is constitutionally compelled because of an asserted incompatibility of local representation and exclusive legislative authority of the national Congress.[8]

It is the purpose of this article to challenge the hitherto unchallenged assumption that the Constitution denies citizens of the District congressional representation. Part I reviews the historical origins of clause 17 and the creation of the District itself to show that neither the framers nor the Congress which accepted the cession of the District's lands from Virginia and Maryland intended to leave District residents without representation in Congress. Part II questions the conventional assumption that the word "state," as used in the Constitution, has some frozen meaning always excluding the District. The theory of "nominal state-

4 *See, e.g.*, H.R. REP. No. 91-1385, 91st Cong., 2d Sess. 15 (1970); *Hearings on Congressional Representation for the District of Columbia Before the Subcomm. on Constitutional Amendments of the Senate Comm. on the Judiciary*, 87th Cong., 2d Sess. 37 (1962).

5 U.S. CONST. art. I, § 2.

6 U.S. CONST. amend. XVII.

7 U.S. CONST. art. I, §§ 2 & 3.

8 *See Hearings on H.J. Res. 529 Before Subcomm. No. 5 of the House Comm. on the Judiciary*, 86th Cong., 2d Sess., ser. 18, at 170 (1960). Thus, the House report accompanying what became the 23d amendment, granting the District representation in the electoral college, quoted approvingly a former D.C. Commissioner who had testified:

> In the ordinary course of government in this country, people in each jurisdiction are governed by legislators whom they elect.
>
> This general principle of representation is suspended in the District of Columbia because the nature of the District requires it to be ruled for and in the interests of all the people of the country.

H.R. REP. No. 91-1385, 91st Cong., 2d Sess. 15 (1970). The same report concluded from the long history of disfranchisement that "the constitutional grant of exclusive power over the District to the Congress, has been more persuasive than any other reason or logic or emotion" in impeding enfranchisement. *Id.* at 30.

hood" is introduced, *i.e.*, the proposition that the word "state" should be interpreted to include the District in some constitutional contexts. Part III attempts to demonstrate that the intent of the framers and the broad purposes of the Constitution would best be served by interpreting "state," as it is used in article I, section 2 and in the 17th amendment, to include the District.

I. Origin and Purpose of the District of Columbia

A. *The Drafting and Ratification of Clause 17: "Exclusive Legislation"*

The conferees at the Federal Constitutional Convention of 1787 were well aware of the need for a territorially distinct seat of government for the United States. Just four years before the convention, with some eighty mutinous soldiers "occasionally uttering offensive words and wantonly pointing their muskets to the windows of the hall of congress," the city of Philadelphia had refused to lend its protection to the Continental Congress. In consequence, the congressional leadership "signified, that, if the city would not support Congress, it was high time to remove to some other place,"[9] and the Congress abruptly adjourned to New Jersey. What Mr. Justice Story later called "the degrading spectacle of a fugitive congress"[10] thus prompted the draftsmen of the Constitution to consider exclusive federal jurisdiction at the seat of government.[11]

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9 5 Elliott's Debates in the Congress of the Confederacy 92-93 (1901).

10 2 J. Story, Commentaries on the Constitution of the United States § 1219, at 116 (2d ed. 1851). The lesson of the mutiny scare, in Justice Story's words, was that "it could never be safe to leave in possession of any state the exclusive power to decide whether the functionaries of the national government should have the moral or physical power to perform their duties." *Id.* § 1218, at 115-16. *See generally* Report of the Interdepartmental Committee for the Study of Jurisdiction over Federal Areas within the States, pt. II, at 15-27 (1957) [hereinafter cited as Study of Juris.].

11 The Continental Congress itself addressed the problem of federal jurisdiction just three months after the mutiny when, while meeting in Princeton, it adopted the following resolution:

> That buildings for the use of Congress be erected on or near the banks of the Delaware, provided a suitable district can be procured on or near the banks of the said river, for a federal town; and that the right of soil, and

George Mason of Virginia first raised the question at the Convention,[12] expressing two objections to having the national and a state capital at the same place. First, such a coincidence of location would produce jurisdictional disputes; second, it would give "a provincial tincture to your national deliberations."[13] Mason proposed a clause which would prevent co-location any longer than necessary to build the public buildings required for a permanent national capital, but withdrew his motion because of the political sensitivity of the issue of the location of the capital. Nevertheless, after the convention heard James Madison urge a central place as "just and wise," the Committee of Detail was instructed to consider a clause granting Congress the power "to exercise exclusively Legislative authority at the seat of the General Government and over a district around the same, not exceeding ____ square miles; the consent of the Legislature of the State or States comprising the same, being first obtained."[14] At the same time, Charles Pinckney of South Carolina asked the Committee to consider the power "to fix and permanently establish the seat of Government of the United States in which they shall possess the exclusive right of soil and jurisdiction."[15] These proposals were among those subsequently submitted for consideration by the Committee of Eleven on August 31, 1787, without further debate.[16]

The Committee's report on September 5 combined the two proposals into a clause creating the power "to exercise exclusive legislation in all cases whatsoever over such district (not exceed-

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an exclusive or such other jurisdiction as Congress may direct, shall be vested in the United States.

8 J. OF CONTINENTAL CONGRESS 295 (G.P.O. ed. 1922); STUDY OF JURIS., *supra* note 10, at 17.

12 Early in the Constitutional Convention, Charles Pinckney of South Carolina submitted a draft constitution which authorized the legislature to "provide such dockyards and arsenals, and erect such fortifications, as may be necessary for the United States, and to exercise exclusive jurisdiction therein." 5 J. ELLIOTT, MADISON PAPERS CONTAINING DEBATES ON THE CONFEDERATION AND THE CONSTITUTION 130 (1815). There was no debate on his proposal at that time.

13 J. MADISON, THE DEBATES IN THE FEDERAL CONVENTION OF 1787 WHICH FRAMED THE CONSTITUTION OF THE UNITED STATES OF AMERICA 332 (Hunt & Scott ed. 1920) [hereinafter cited as MADISON'S DEBATES].

14 *Id.* at 420.

15 *Id.*

16 *Id.* at 512.

ing ten miles square) as may by cession of particular states and the acceptance of the Legislature become the seat of the Government of the United States. . . ."[17] The Convention approved this provision without debate, and it emerged, with minor changes by the Committee of Style, as article I, section 8, clause 17 of the Constitution.

That the memory of the mutiny scare and the need for full federal authority at the national capital motivated the drafting and acceptance of the "exclusive legislation" clause was clearly demonstrated in the subsequent ratification debates. In Virginia, for example, James Madison made a thinly veiled reference to Pennsylvania's failure to provide police protection to the Continental Congress when he asked:

> How could the general government be guarded from the undue influence of particular states, or from insults, without such exclusive power? If it were at the pleasure of a particular state to control the sessions and deliberations of Congress, would they be secure from the influence of such states? If this commonwealth depended for the freedom of deliberation on the laws of any state where it might be necessary to sit, would it not be liable to attacks of that nature (and with more indignity) which have been already offered to Congress?[18]

Another delegate in the same debate summarized clause 17 as granting only such power "as opposed to the legislative power of the state where it shall be"[19] — a power, in short, aimed only at avoiding future problems of state interposition at the seat of the national government. When opponents of the "exclusive legislation" power voiced their fear that it would be abused to create a base for excessive national power or a pirate haven, delegate Pendleton again emphasized the relatively narrow purpose of the power:

> [Clause 17] gives [Congress] power over the local police of the place, so as to be secured from any interruption in their proceedings . . . Congress shall exclusively legislate there, in order to preserve the police of the place and their own personal inde-

17 *Id.*

18 3 ELLIOTT'S DEBATES IN THE SEVERAL STATE CONVENTIONS ON THE ADOPTION OF THE CONSTITUTION 433 (1901) [hereinafter cited as ELLIOTT'S DEBATES].

19 *Id.*

> pendence, that they may not be overawed or insulted, and of course to preserve them in opposition to any attempt by the state where it shall be.[20]

The question of the representation of District residents received little express attention during the course of the drafting of clause 17, or in subsequent ratification debates,[21] for several reasons. First, given the emphasis on federal police authority at the capital and freedom from dependence on the states, it is unlikely that the representation of future residents in the District occurred to most of the men who considered the "exclusive legislation" power. As long as the geographic location of the District was undecided, representation of the District's residents seemed a trivial question. Second, it was widely assumed that the land-donating states would make appropriate provision in their acts of cession to protect the residents of the ceded land.[22] Thus, delegate Iredell noted in the North Carolina ratification debates that "[w]herever they may have this district, they must possess it from the authority of the state within which it lies; and that state may stipulate the conditions of the cession. Will not such state take care of the liberties of its own people?"[23] Finally, it was assumed that the residents of the District would have acquiesced in the cession to federal authority. Madison, writing in *The Federalist No. 43*, argued that

> The inhabitants [of the District] will find sufficient inducements of interest to become willing parties to the cession; as they will have had their voice in the election of the government which is to exercise authority over them; as a municipal legislature for local purposes, derived from their own suffrages, will of course be allowed them . . . . every imaginable objection seems to be obviated.[24]

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20 *Id.* at 439-40.

21 In the *Study of Jurisdiction* it is suggested that "[t]he principal criticism levied against . . . [clause 17] in . . . [the North Carolina and Virginia ratifying] conventions was that it was destructive of the Civil rights of the residents of the areas subject to its provisions." The record of the debates, however, shows that most criticism centered instead on the possible privileges and advantages which District residents might gain by virtue of their special status. STUDY OF JURIS., *supra* note 10, at 23.

22 *See* 3 ELLIOTT'S DEBATES, *supra* note 18, at 433 (remarks of James Macison); THE FEDERALIST No. 43, at 280 (Earle ed. 1937) (J. Madison).

23 4 ELLIOTT'S DEBATES, *supra* note 18, at 219.

24 THE FEDERALIST No. 43, at 280 (Earle ed. 1937) (J. Madison). Latter day propo-

It followed that no special mechanism for District representation was called for.

B. *The Acts of Cession and Acceptance*

After an area on the Potomac was selected as a site, Maryland and Virginia both authorized their representatives to Congress to cede the necessary land to the United States.[25] Congress accepted the cessions by the Act of July 16, 1790,[26] and ordered the territory surveyed. The acceptance established the first Monday of December, 1800, as the official date for the removal of the government to the District. In 1791, President Washington proclaimed the boundaries of the District, and in the same year, Maryland ratified the cession.[27] The District of Columbia duly became the seat of the national government on the first Monday of December, 1800.

Because of the lag between cession and acceptance, exercise of exclusive federal jurisdiction over the District was postponed. The Virginia act of cession provided that the jurisdiction of her laws over District residents and land would not "cease or determine until Congress should accept the cession, and should by law provide for the government thereof."[28] The Maryland ratification of cession contained a similar proviso.[29] Congress, acknowledging

nents of District representation have consistently misread this statement from *The Federalist* by dropping the future perfect tense to make the statement read, ". . . they will have their voice in the election of the government. . . ." *See, e.g., Hearings on H.J. Res. 396 Before the House Comm. on the Judiciary*, 90th Cong., 1st Sess., ser. 6, at 43 (1967) (statement of Citizens' Joint Comm. on Nat'l Representation). Properly cited, the statement is doubtful authority for the argument that Madison contemplated District representation in Congress, and as illustrious a contemporary as Chief Justice Marshall expressed the view in 1820 that the District "voluntarily relinquished the right of representation, and has adopted the whole body of Congress for its legitimate government . . . ." Loughborough v. Blake, 18 U.S. (5 Wheat.) 317 (1820) (dictum). *But see* G. GREEN, WASHINGTON: VILLAGE AND CAPITAL, 1800-18, at 11 (1962) (if Madison implied past tense, "few contemporaries observed the nuance").

25 Maryland passed cession legislation in 1788. An Act to Cede to Congress a District of Ten Miles Square in This State for The Seat of The Government of The United States, 2 Kilty Laws of Md., ch. 46 (1788). Virginia enacted a similar law the following year. An Act for the Cession of 10 Miles Square, 13 Va. Stat. at Large, ch. 32, at 43 (Hening 1823).

26 Ch. 50, 1 Stat. 130.

27 2 Kilty Laws of Md., ch. 45 (1791).

28 An Act for the Cession of 10 Miles Square, 13 Va. Stat. at Large, ch. 32, at 43 (Hening 1823).

29 An Act to Cede to Congress a District of Ten Miles Square in This State for The Seat of The Government of The United States, 2 Kilty Laws of Md., ch. 46 (1788).

these provisos, also established in the acceptance that the "operation of the laws" of the states within the District would continue until the removal of government to the District and the time when Congress would "otherwise by law provide."[30] As a result, not only did Maryland and Virginia law remain in full force and effect during the next decade, but District residents continued to participate in the congressional elections of these states, and to be represented by Maryland and Virginia congressmen after the cession.

The acceptance in 1791 was merely part of a compact with the ceding states, providing for the assimilation of state laws on the date of transfer of jurisdiction (December, 1800) until such subsequent date as Congress should act to create other law for the District. Consequently, District residents did not lose state citizenship until December, 1800, and the prior decade of voting and representation provided no precedent for the representation of District citizens.[31]

C. *The Disfranchisement*

The provisos of the acts of cession and acceptance continued Maryland and Virginia laws in full force and effect until such time as Congress acted. In 1800, less than a month after the seat of government was removed to the District, Congress took up a proposed bill expressly adopting for the District the state laws in effect in the District on the date of removal.[32] The bill was to "freeze" the state laws for the District as they stood in December, 1800, but was intended to allow Congress

> at some future period . . . to enter on a system of legislation in detail, and to have established numerous police regulations.

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30 Act of July 16, 1790, ch. 50, 1 Stat. 130.

31 Clause 17 gave Congress exclusive jurisdiction only over the seat of the government, which the District did not become until December, 1800. United States v. Hammond, 26 F. Cas. 96 (No. 15293) (C.C.D.C. 1801).

32 *See* 10 ANNALS OF CONG. 821-25 (1800), setting forth the preamble of the proposed bill:

> Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That the laws of the State of Virginia, as they existed on the first Monday of December, in the year 1800, shall be and continue in force in that part of the District of Columbia which was ceded by the same state . . . [and similarly the laws of Maryland].

> At this time, the present exigency would be provided for by confirming the laws of Virginia and Maryland, and by giving effect to them by the institution of a competent judicial authority.[33]

The bill would thus cure the "evil" of confusion over jurisdiction in the District,[34] and "remove uncertainty as to the effect of state laws."[35]

But an additional, implicit consequence of the proposed legislation was the disfranchisement of the District. Representative Nicholas of Virginia observed that by the exercise of exclusive legislative authority by Congress, all further state legislative authority, still continued until such exercise by the effect of the provisos, would be cut off. Thus, District residents "would cease to be the subject of State taxation, [and] it could not be expected that the States would permit them, without being taxed, to be represented."[36] Disfranchised, the District would be placed "in the situation of a conquered territory,"[37] and the District residents "would be reduced to the state of subjects, and deprived of their political rights."[38] According to the bill's opponents the proposed legislation was superfluous,[39] as it contributed no new substantive law to District affairs, and the alleged need to which it was addressed — the need for certainty — could not justify the serious political consequences for District residents. The alternative, they implied, was to pass no legislation at all[40] — the congressional power under clause 17 being entirely permissive and discretionary[41] — or to provide in the bill for continued District voting in Virginia and Maryland elections.[42]

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33 *Id.* at 872 (remarks of Representative Harper).

34 *Id.* at 869 (remarks of Representative Lee).

35 *Id.* at 993 (remarks of Representative Craik).

36 *Id.* at 869 (remarks of Representative Nicholas).

37 *Id.* at 871 (remarks of Representative Randolph).

38 *Id.* at 992 (remarks of Representative Smylie).

39 Chief Justice Marshall subsequently confirmed this conclusion of the bill's opponents in United States v. Sinnis, with dictum that that bill "was perhaps only declaratory of a principle which would have been in full operation without such declaration . . . ." 5 U.S. (1 Cranch) 252, 257 (1803).

40 *See* 12 ANNALS OF CONG. 490 (1803) (remarks of Representative Dennis).

41 10 ANNALS OF CONG. 869-70 (1800) (remarks of Representatives Nicholas & Otis).

42 *Id.* at 874 (remarks of Representative Craik). One historian has suggested that such a bill could have been passed, containing a proviso permitting continued voting, similar to provisions governing voting rights of residents on other federally controlled

The opponents of the bill thus made it clear that disfranchisement would follow passage of the bill, and for the first time brought the issue of District representation before Congress. More importantly, they implied that without the bill, District representation by Maryland and Virginia congressional delegations could continue, notwithstanding the vesting of exclusive legislative authority in Congress on the first Monday of December, 1800. The premise underlying their opposition to the bill — a premise never challenged in the congressional debates which ensued — was that the location of the seat of government at the District and the lodging of exclusive legislative authority over the District in Congress were consistent with continued representation of District residents in Congress. Their objection was to the terms of the proposed bill, not to the constitutional grant of legislative authority to the Congress.

The bill's opponents did not succeed in convincing a majority of the Congress, however, and the bill was passed in early 1801.[43] One reason for its passage was simply that it permitted Congress to postpone indefinitely detailed lawmaking for the District, sparing indifferent congressmen from having to struggle with "numerous police regulations."[44] This factor may have weighed heavily on a lame duck Federalist Congress in the last month of its term, disrupted by the dramatic Burr-Jefferson tie in the electoral college.[45] Second, the passage of the bill did remove uncertainty about jurisdiction and the effect of state laws in the District, whatever the source of that uncertainty, and thereby probably satisfied District merchants, police and court personnel. At the same time, most of Congress assumed, as had James Madison writing in *The Federalist No. 43*[46] more than a decade previously, that District residents would receive adequate informal representation by senators and congressmen residing in the District. As Representative Dennis put it, ". . . from their contiguity to, and residence among the members of the General

land, *e.g.*, military reservations. J. Young, The Washington Community: 1800-1828, at 14 n.5 (1966).

43 Act of Feb. 27, 1801, ch. 15, 2 Stat. 103.

44 10 Annals of Cong. 872 (1800) (remarks of Representative Harper).

45 G. Green, *supra* note 24, at 24.

46 The Federalist No. 43, at 280 (Earle ed. 1937) (J. Madison).

Government, they knew that though they might not be represented in the national body, their voice would be heard."[47] The most important reason why opponents of the bill lost, however, was again probably congressional indifference to the small, sparsely populated District. The District registered only 14,093 in the Census of 1800, well below the 50,000 minimum population required for the erection of states in the Northwest Territory by the Ordinance of 1787.[48] Just as at the Constitutional Convention, the District's small size and the proximity of its residents to Congress made the problem of its representation less than pressing for lawmakers.

The opponents of the Act of February 27, 1801, did not give up their fight for some form of District representation, however. In 1803, they introduced a bill providing for retrocession of the District to Maryland and Virginia to prevent "political slavery." They argued that, as constituted, the District was "an experiment in how far freemen can be reconciled to live without rights."[49] The retrocession bill was also defeated.[50]

In the 1801 debates, proponents of the initial "assimilation" bill had suggested that constitutional amendment might in the future provide the District with a delegate to Congress, when its size merited representation,[51] but no one stated explicitly that amendment was the only solution. Rather, the emphasis was on the irrevocability of the cut-off of state lawmaking effected by the act, not the irrevocability of the disfranchisement itself.[52]

In 1803, on the other hand, even the proponents of enfranchisement by the device of retrocession seemed to question congres-

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47 10 ANNALS OF CONG. 998-99 (1801). *See also* District of Columbia Fed'n of Civil Ass'n, Inc. v. Volpe, 434 F.2d 436, 461 (D.C. Cir. 1970) (Mackinnon, J., dissenting):

> It is commonly recognized that their close proximity to the seat of Government, the influence of a favorable local press that articulates their position and the frequency with which members of Congress, long resident in the District and its environs, tend to acquire similar local interests to those of local residents, gives them more actual influence in Congress than citizens of states.

48 *See* S. REP. No. 507, 67th Cong., 2d Sess. 14 (1922).

49 12 ANNALS OF CONG. 499 (1803) (remarks of Representative John Randolph, Jr.).

50 *Id.* at 506 (1803). One historian has suggested that it was defeated because retrocession was viewed as a first step in relocating the capital to the north. G. GREEN, *supra* note 24, at 30.

51 10 ANNALS OF CONG. 998-99 (1801) (remarks of Representative Dennis).

52 *See, e.g., id.* at 999 (1801) (remarks of Representative Mason).

sional power to enfranchise the District directly. Representative Smylie, a leading advocate of District representation in both the 1801 and 1803 debates, stated: "Under the exercise of exclusive jurisdiction the citizens are deprived of all political rights, nor can we confer them."[53] However, this statement may simply have been a declaration of political reality rather than of constitutional law, for Representative Randolph subsequently noted that statehood for the District was impossible because "the other states can never be brought to consent that two Senators, and at least three electors of the President, shall be chosen out of this small spot, and by a handful of men."[54] Thus congressional inability to confer voting rights on the District was arguably a political disability; the debates provide no clearly articulated argument that there was a constitutional bar.

In summary, the record of the Constitutional Convention and subsequent congressional debates indicates that the District was created for the relatively narrow purpose of preserving national police authority and jurisdiction at the seat of the government.[55] The clause 17 power "was like a coat of armor, intended to protect the Government in periods of danger and not to be worn at all times for parade and show."[56] Disfranchisement was neither necessary nor deliberately planned to achieve this purpose. District residents voted regularly until the Act of February 27, 1801, and no one in Congress at that time challenged the assumption that they could have continued to vote had the act not been passed or had it been passed in different form. Once the act was passed, there was some doubt of future congressional ability to remedy the resultant disfranchisement, but whether the disability was constitutional or merely political is unclear from the history.[57] Congressional action (or inaction) and the form such

53 12 ANNALS OF CONG. 487 (1803). *But see id.* at 489 (1803) (remarks of Representative Huger).

54 *Id.* at 498 (1803).

55 Reviewing the origins of clause 17, STUDY OF JURIS., *supra* note 10, at 21 concluded: "[T]he provision for exclusive jurisdiction appears to represent, to considerable extent, an attempt to resolve by the adoption of a legal concept a problem stemming from a lack of physical power."

56 10 ANNALS OF CONG. 868 (1800) (remarks of Representative Nicholas).

57 In 1846, the Congress authorized the retrocession of most of the Virginia grant, conditioned on approval by popular referendum in the District. Act of July 9, 1846, ch. 35, 9 Stat. 35. When such approval was given, the area once again became part

action took determined the non-representation of the District, not some inexorable command of clause 17.

II. The Theory of Nominal Statehood

The texts of article I, section 2 and of the 17th amendment stand as the chief obstacles to District representation in Congress. These provisions condition representation upon statehood, and the proposition that the word "state," as used in these provisions, should include the District has never been seriously considered. Yet words in the Constitution do not have inflexible or constant meanings. Indeed, "state" has been interpreted to include the District for purposes of other constitutional provisions, as will be shown below. And if a constitutional reference to "state" is ambiguous, then a rational and consistent approach to its interpretation may be to include the District where that is necessary to effectuate the framers' intent. Following this course, one might well conclude that the District should be treated as a "nominal state" for purposes of article I, section 2 and the 17th amendment, and thus be entitled to congressional representation.

A. *The Early Case Law*

The Supreme Court first had occasion to consider the District's nominal statehood for the purpose of determining whether District residents could bring suit in federal courts under the diversity jurisdiction conferred by the First Judiciary Act[58] and authorized by article III, sections 1 and 2. The answer given by Chief Justice Marshall in *Hepburn and Dundas v. Ellzey*[59] was a resounding "No."[60] The Chief Justice rejected the contention

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of Virginia and its residents became entitled to suffrage in that state and representation by its congressional delegation. The constitutionality of this retrocession was subsequently challenged in Phillips v. Payne, 92 U.S. 130 (1875), but the Court held that the plaintiff was estopped by the passage of time, recognizing the retrocession de facto. Unstated but implied in the decision, was the Court's conclusion that the referendum constituted an unconstitutional delegation of clause 17 authority, but not that retrocession per se was unconstitutional. The Court also implied that retrocession could be effected by a compact between Maryland and the United States.

58 Act of Sept. 24, 1789, ch. 20, 1 Stat. 73.

59 6 U.S. (2 Cranch) 445 (1804).

60 *Accord*, Hooe v. Jamieson, 166 U.S. 395 (1897).

that "state" could have different meanings in the Constitution, and looked expressly to article I to determine its single meaning. "These clauses show that the word state is used in the Constitution as designating a member of the union, and excludes from the term the significance attached to it by the writers on the laws of nations."[61] Accordingly, the federal district courts had no jurisdiction to entertain an action by a District resident against a citizen of a state; such an action was beyond the limits of the federal judicial power set by article III, section 2.

Chief Justice Marshall did not subsequently reverse himself, but sixteen years later he implicitly retreated somewhat from *Hepburn* in *Loughborough v. Blake*.[62] In *Loughborough* he ruled that Congress had the power to impose a direct tax on the District in proportion to its population, notwithstanding the command of article I, section 2 that direct taxes (like seats in the House) be apportioned "among the several states which may be included within this union." He treated the apportionment language as a "standard" by which direct taxes were to be laid, citing the general tax power of article I, section 8, clause 1, to uphold the tax on the District, as well as Congress' clause 17 power over the District as two alternative grounds for the holding.[63] The "standard" theory was disingenuous, however. If *Loughborough* does not treat the District as a state, for what purpose is the "standard" applicable? A more forthright interpretation of the case is to read it as deeming the District a state for the purposes of taxation.

Subsequently, the Court did not feel itself bound by the *Hepburn* ruling in construing the application of other constitutional powers and rights to the District. In *Callan v. Wilson*[64] it held that District residents had a sixth amendment right to trial by jury, though the amendment spoke only of "an impartial jury of the state and [judicial] district wherein the crime shall have been committed, which district shall have been previously ascertained by law."[65] In *Stoutenburgh v. Hennick* the Court stated

61 Hepburn & Dundas v. Ellzey, 6 U.S. (2 Cranch) 444, 453-54 (1804).
62 18 U.S. (5 Wheat.) 317 (1820).
63 *Id.* at 319.
64 127 U.S. 540 (1887).
65 *See also* Capital Traction Co. v. Huf, 179 U.S. 1, 5 (1898).

that Congress could exercise but not delegate its commerce power to regulate business across District borders, notwithstanding the wording of article I, section 8, clause 3 ("commerce . . . among the several states").[66] Thus, the Court effectively recognized the District's nominal statehood for the purposes of congressional power to regulate interstate commerce.[67]

B. *The* Tidewater *and* Carter *Cases*

It was not until 1949, however, that the Court once again directly confronted the question of the District's nominal statehood and of *Hepburn's* continued vitality. In *National Mutual Insurance Co. v. Tidewater Transfer Co.*,[68] the Court considered the constitutionality of a congressional statute conferring on federal courts diversity jurisdiction over cases between District and state citizens.[69] By a five to four vote the Court upheld the statute, notwithstanding the language of article III, section 2 defining diversity cases as those "between citizens of different states."

Justices Jackson, Black and Burton refused to reconsider Chief Justice Marshall's rejection of the District's nominal statehood for the purposes of construing article III and the federal judicial power, on the grounds that any other view would make the Constitution inconsistent in its usage of "state."[70] Nevertheless, they found a congressional power under clause 17 to confer diversity jurisdiction over District plaintiffs on federal courts.[71] Yet such an analysis effectively gives Congress a power under clause 17 to override the express limits on the judicial power set

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66 129 U.S. 141 (1889).

67 *See also* Neild v. District of Columbia, 110 F.2d 246 (D.C. Cir. 1940); District of Columbia v. Monumental Motor Tours, 122 F.2d 195, 196 (D.C. Cir. 1941).

68 337 U.S. 582 (1949).

69 28 U.S.C. § 41(1) (1970).

70 Inconsistency in word usage is not foreign to the Constitution, however. Compare "manner" in article I, section 4, with its use in article II, section 1. With the exception of Justice Black, the Court agreed that the article I, section 4 usage did not encompass the setting of voter qualifications. Oregon v. Mitchell, 400 U.S. 112, 288 (1970) (Stewart, J., dissenting). Yet the Court interpreted the article II, section 1 usage to include the setting of voter qualifications. *Id.* at 201 (Harlan, J., dissenting); Williams v. Rhodes, 393 U.S. 23, 29 (1968). *See* Greene, *Congressional Power Over the Elective Franchise: The Unconstitutional Phases of* Oregon v. Mitchell, 52 B.U.L. REV. 505, 512-14 nn.30, 36, 40 (1972).

71 337 U.S. at 582.

forth in article III.[72] Taken literally, Justice Jackson's opinion is not merely "contrived," as Hart and Wechsler described it,[73] but untenable.

An alternative analysis that would support the result reached by Justices Jackson, Black and Burton would be to view the statute as an exercise of "protective jurisdiction," conferred to protect a substantive federal interest in preventing "party discrimination" against District litigants in the state courts.[74] Then an action under the statute would clearly arise under the laws of the United States, and so fall within the limits of article III. This analysis also seems to avoid the intent of the framers, however, insofar as it "assumes that a case can arise under federal law where the only federal law involved is a naked grant of federal jurisdiction."[75] Such an assumption effectively swallows the limits on the federal judicial power set by article III, on the assertion of "some remote connection with an unexpressed federal interest."[76]

Justices Rutledge and Murphy, in their concurring opinion, approached the "hoary precedent" of Chief Justice Marshall with greater candor, if less respect:

> [N]othing but naked precedent, the great age of the Hepburn ruling, and the prestige of Marshall's name, supports [JJ. Jackson's, Black's, and Burton's] . . . result. It is doubtful whether anyone could be found who now would write into the Constitution such an unjust and discriminatory exclusion of District citizens from the federal courts. . . . The very brevity of the opinion and its groundings, especially in their ambiguity, show that the master hand which later made his work immortal faltered.[77]

Having thus unceremoniously set aside *Hepburn*, the Justices went on to treat the District as a nominal state for the purposes of Article III, and reject the notion that the Constitution only recog-

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72 *See* P. Bator, D. Shapiro, P. Mishkin & H. Wechsler, Hart & Wechsler's The Federal Courts and the Federal System 12 *et seq.* (2d ed. 1973).

73 *Id.* at 417.

74 *Id.* at 416-417.

75 *Id.* at 417. Hart & Wechsler set up this argument, but neither adopt nor reject it explicitly.

76 *Id.*

77 337 U.S. at 617-18.

nized one meaning of "state," from which the District was excluded. "Marshall's sole premise of decision in the Hepburn case has failed, under the stress of time and later decision as a test of constitutional construction. Key words like 'state,' 'citizen,' and 'person' do not always and invariably mean the same thing."[78]

Thus *Tidewater*, while it did not expressly overrule *Hepburn*, significantly undermined its authority for the view that "state" has a single, unvarying constitutional meaning which excludes the District. Yet *Tidewater* effectively recognized the District's nominal statehood only for purposes of construing the federal judicial power, and not for purposes of representation. Even Justices Rutledge and Murphy implied that they might interpret article I differently, when they noted that Chief Justice Marshall had failed to distinguish between "the purely political clauses" in his reference to article I in *Hepburn*, and "those affecting civil rights of citizens."[79] Moreover, Chief Justice Vinson and Justice Douglas, dissenting, also drew a distinction in interpreting "state" between those constitutional provisions "to which time and experience were intended to give content" and those "concerned solely with the mechanics of government."[80]

Justice Frankfurter in his dissent was more summary, dismissing disdainfully the majority's "latitudinarian attitude of Alice in Wonderland toward language."[81] For him, it was enough that "it was not contemplated that the district which was to become the seat of government could ever become a State."[82] But he, too, drew the distinction between those constitutional provisions which were "technical in the esteemed sense of the word" and those dealing with "generalities expanding with experience."[83]

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78 *Id.* at 623.

79 *Id.* at 623.

80 *Id.* at 615.

81 *Id.* at 654.

82 *Id.* at 653. This was, of course, unresponsive to Justices Rutledge and Murphy, since they did not argue that the District was a state. They only argued that the District could be regarded as a state ("nominal statehood") for the purpose of construing the federal judicial power; they were arguing a rule of construction, and not the District's formal status.

83 *Id.* at 651. *See generally* United States v. Lovett, 328 U.S. 303, 321 (1946) (Frankfurter, J., concurring); Wofford, *The Blinding Light: The Uses of History in Constitutional Interpretation*, 31 U. Chi. L. Rev. 502, 515 (1964).

Twenty-four years later, in *District of Columbia v. Carter*,[84] the Supreme Court recognized nominal statehood as a commonplace of constitutional construction. Justice Brennan, writing for the Court, observed that "[w]hether the District of Columbia constitutes a 'State' or 'State or Territory' within the meaning of any particular statutory or constitutional provision depends upon the character and aim of the special provision involved."[85] Thus, by 1973 a majority of the Court had rejected Chief Justice Marshall's insistence in *Hepburn* on a single unvarying meaning of "state" in the Constitution.[86]

III. Nominal Statehood and District Representation

A. *The Case for Representation*

Even if one concedes that "state" may have different meanings in different parts of the Constitution, there remains the question whether "state" should be read to include the District in the context of article I, section 2 and the 17th amendment. As the history reviewed in part I of this article suggests, the congressional disfranchisement wrought when the District was fully severed from Maryland and Virginia was unintended by both the constitutional framers and the parties to the cession legislation. The new government's purpose in creating the District was to gain exclusive police and judicial jurisdiction, thereby assuring the security of congressional deliberations. No federal purpose was asserted for, or served by, denying District residents participation in the national legislature equivalent to that exercised by state residents. Rather here, as in the diversity jurisdiction provisions, the framers proceeded in their drafting without considering

84 409 U.S. 418 (1973) (construing the words "State or Territory" not to include the District of Columbia in 42 U.S.C. § 1983, although the same words do include the District in § 1982).

85 *Id.* at 420.

86 The Supreme Court has also accepted the District's nominal statehood for purposes of statutory and treaty interpretation on numerous occasions. Thus, in Geofrey v. Riggs, 133 U.S. 141 (1889), the Court held that treaty references to "States of the Union" included the District in order to give aliens the right to inherit property in the District. *See also* Hurd v. Hodge, 334 U.S. 24 (1948); Talbott v. Silver Bow County, 139 U.S. 438 (1890).

the interests of the "unborn citizens" of the "hypothetical city"[87] which was to become the District.

In light of the limited purposes for which Congress was given complete jurisdiction over the District, and of the size to which the "hypothetical city" has grown, a reconsideration of its claim to congressional representation is in order. Interpreting "state" to include the District for purposes of congressional representation would remove a political disability which has no constitutional rationale. It would grant to District residents, who are in all other respects as much Americans as state residents, their proportionate influence in national decisions. It would correct the historical accident by which D.C. residents lost the shelter of state representation without gaining separate participation in the national legislature.

One might argue in opposition that the relevant constitutional provisions deal with structural relationships, and are thus what Justice Frankfurter would call "technicalities" to be strictly and narrowly construed, rather than "generalities expanding with experience."[88] However, there has been little agreement on the Court about what constitutional provisions fall in which category. Certainly no Justice has ever been able to classify the right of suffrage very confidently.[89] *Tidewater* demonstrates vividly the disagreements over classification, since the majority and minority are at odds over the classification of article III provisions — surely "mechanical" or "technical" on their face. One suspects that the classification is ultimately more conclusory than analytic, justifying a construction rather than guiding it.[90]

In addition, the Court had itself ignored the distinction altogether in prior cases. Thus, the effect of *Loughborough v. Blake*[91]

87 National Mutual Ins. Co. v. Tidewater Transfer Co., 337 U.S. 582, 622 (1949) (Rutledge, J., concurring).

88 *Id.* at 654. Justice Frankfurter was there referring to the first two sections of article III as "technicalities in the esteemed sense of the word." However, one observer has suggested "it is not at all clear . . . whether Mr. Justice Frankfurter placed a particular word in the frozen category because the word was specific or whether he called it specific — or 'technical in the esteemed sense of the word' — because he wanted it to be frozen." Wofford, *supra* note 83, at 517.

89 *See, e.g.*, the debate between Justices Douglas & Harlan in Oregon v. Mitchell, 400 U.S. 112, 138, 164 (1970).

90 *See* note 88 *supra*.

91 18 U.S. (5 Wheat.) 317 (1820).

is to recognize the District's nominal statehood for the purposes of construing the tax apportionment mandate of article I, a "political" or "technical" section of the Constitution according to Justices Douglas, Frankfurter, Reed and Chief Justice Vinson in *Tidewater*. And in *Stoutenburgh v. Hennick*,[92] the District's nominal statehood was also recognized for the purpose of construing the interstate commerce power, surely one of the most "political" provisions of the Constitution.

The status of article I, clause 2 and the 17th amendment is under these circumstances far from clear. But even if one might be tempted generally to place these provisions in the "technical" category, are they still to be so treated where linked to the right of suffrage? The right to vote, while not a constitutional right per se,[93] has long been recognized as a "fundamental political right, because preservative of all rights,"[94] and the "essence of a democratic society . . . the heart of a representative government."[95] In this context it would seem to be more appropriate to

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92 129 U.S. 141 (1889).

93 *See, e.g.*, Dunn v. Blumstein, 405 U.S. 330 (1972); San Antonio Ind. School Dist. v. Rodriguez, 411 U.S. 1, 35 n.78 (1973) (dictum). *But cf.* Baker v. Carr, 369 U.S. 186, 242 (1962) (Douglas, J., concurring in part) (right to vote is inherent in republican form of government envisaged by the Guaranty Clause); Greene, *supra* note 70, at 547; 1 W. Crosskey, Politics and the Constitution in the History of the U.S. 523-24 (1953). The lower federal courts have to date rejected the argument that the District's lack of suffrage is unconstitutionally discriminatory. The D.C. District Court expressed the view in Hobson v. Tobriner, 255 F. Supp. 295 (1966) that "[b]y choosing to live within the District of Columbia, all citizens, regardless of race, relinquish the right to vote in local elections," and by the same argument, have voluntarily given up the right to vote for congressional representatives. That court also rejected a 15th amendment claim in Carliner v. Board of Comm'rs, 265 F. Supp. 736, 740 (1967), *aff'd per curiam*, 412 F.2d 1091 (D.C. Cir. 1969), with the dictum that "the circumstances of the place of birth can hardly be considered a discriminatory act on the part of the Federal Government." 265 F. Supp. at 740.

94 Yick Wo v. Hopkins, 118 U.S. 356, 370 (1886).

95 Reynolds v. Sims, 377 U.S. 533, 555, 562 (1964). Wesberry v. Sanders, 376 U.S. 1, 17 (1964) is even stronger: "No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined." Justice Douglas has declared that the right to vote for national officers is a privilege and immunity of national citizenship. Oregon v. Mitchell, 400 U.S. 112, 149 (1970) (Douglas, J., concurring in part). Congress has also declared it an "inherent constitutional right," 84 Stat. 318 (1970), and of course, suffrage is implicit in the historical American principle of government by consent of the governed. Note, *Home Rule for District of Columbia Without Constitutional Amendment*, 3 Geo. Wash. L. Rev. 205, 210-11 (1934).

follow the admonition of the Supreme Court in *United States v. Classic*:

> We read . . . [the Constitution's] words, not as we read legislative codes which are subject to continuous revision with the changing course of events, but as the revelation of the great purposes which were intended to be achieved by the Constitution as a continuing instrument of government.[96]

A corollary of that rule is that we avoid the restrictive constructions given statutory law, and those which would deny or thwart a basic constitutional purpose. Thus, Chief Justice Warren declared on the exclusion of Representative Adam Clayton Powell from the House:

> Had the intent of the Framers emerged from these materials with less clarity, we would nevertheless have been compelled to resolve any ambiguity in favor of a narrow construction of the scope of Congress' power to exclude members-elect. A fundamental principle of our representative democracy is, in Hamilton's words, "that the people should choose whom they please to govern them."[97]

It is similarly appropriate in reviewing the historical evidence and analyzing the constitutional text bearing on District representation in Congress to resolve ambiguities in favor of the "fundamental principle of our representative democracy."

B. *The Countervailing Arguments*

The conventional analysis would assert that representation for the District threatens "seathood." That is, nominal statehood for this purpose is said to be incompatible with the exclusive legislative authority of the District vested in Congress by clause 17.[98]

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96 United States v. Classic, 313 U.S. 299, 316 (1941). *See also* 317 U.S. xlii, xlvii (1942) (Stone, C.J., speaking for the Court after the death of Justice Brandeis).

97 Powell v. McCormack, 395 U.S. 486, 547 (1969).

98 *See* S. REP. No. 507, 67th Cong., 2d Sess. 3 (1922), reporting favorably on a proposed constitutional amendment giving the District representation:

> The problem is to find a way to give the people of the District the representation to which they are entitled as national Americans in Congress and the electoral college, with access to the federal courts, without depriving Congress of the exclusive legislative control of the District, which the Constitution imposes upon it and which, the courts say, it may not surrender without specific constitutional law amendment.

Second, nominal statehood may deprive the actual states of their equal suffrage in the Senate, guaranteed by article V of the Constitution. Third, nominal statehood may be a theory incapable of containment to the District, "opening the floodgates" to territorial representation in the national legislature.[99]

The alleged incompatibility of statehood and seathood, or exclusive congressional legislative authority, does not withstand close analysis. The question of the District's subordination to congressional authority is logically unrelated to the composition of Congress.[100] The granting of representation to the District does not somehow free it of congressional legislative authority; it merely gives the people of the District their fair share in that authority, which is to say two in 102 Senate seats, and two or three in 435 House seats. Of course a statute recognizing the District's representation in Congress as a nominal state could reaffirm the clause 17 plenary power by reserving "ultimate legislative authority" in Congress, just as the recent "home rule" act did,[101] but such a provision is technically superfluous in either case.

Nor would nominal statehood violate the second proviso of article V, stating that "no State, without its consent, shall be deprived of its equal suffrage in the Senate." This provision has been cited in opposition to District representation on the grounds that such representation would work the proscribed deprivation:

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99 A fourth assertion is possible, *i.e.*, that article IV, section 3, providing that ". . . no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress," is a bar to the District's nominal statehood. Because the area which became the District was "to be forever ceded and relinquished to the Congress and government of the United States, in full and absolute right and exclusive jurisdiction," neither condition appertains. An Act to Cede to Congress a District of Ten Miles Square, 2 Kilty Laws of Md., ch. 46 (1788). State jurisdiction was irrevocably relinquished on the first Monday of December, 1800. United States v. Hammond, 26 F. Cas. 96 (No. 14293) (D.C. 1801). On the same date the District ceased to be a part of either of the ceding states. *Id.*; Downes v. Bidwell, 182 U.S. 244 (1901).

100 Residents of a federal enclave, also within the clause 17 "exclusive legislation" power of Congress, have been held to be entitled to vote in state and national elections, as citizens of the state in which their enclave lies. Evans v. Cornman, 398 U.S. 419 (1970); *cf.* Carrington v. Rash, 380 U.S. 89 (1965).

101 District of Columbia Self-Governmental Reorganization Act § 601, Pub. L. No. 93-198, 87 Stat. 774 (1973).

> . . . to accord two Senators to some unit of government not a state would be diluting, diminishing; and it would be depriving the states of their equal suffrage in the Senate. I do not see how two Senators could be accorded to a territory or a commonwealth or to a District set apart from the States, without violating the very provision of the Constitution which states that no State shall be deprived of its equal suffrage in the Senate.[102]

The short answer to this critique is that by the principle of nominal statehood, the District is a state for the purpose of representation. In addition, the history of the proviso indicates that its purpose was to ensure equality of the states in the Senate, and not to prevent the "dilution" of their votes. In the Constitutional Convention, Roger Sherman of Connecticut expressed his fear that three-quarters of the states might do things "fatal to particular states" by constitutional amendment, such as abolishing the particular states altogether or depriving them of their equal vote in the Senate.[103] In response, Gouverneur Morris proposed the proviso. It was thus aimed only at protecting the equality of states in the Senate, thereby preserving for the small states the benefit of the Great Compromise.[104]

Reviewing this history, a 1922 Senate Report rejected the article V "dilution" argument:

> The plain meaning of this provision is that no State shall have any greater numerical representation in the Senate than any other state. It cannot mean that the aliquot share of the legislative power possessed by a state at any given time cannot be reduced as the proportion of that power which was originally 2 as to 26, has been steadily diminished by the admission of new states until it is now 2 as to 96.[105]

District representation in the Senate manifestly fails to disturb the equality of existing states, nor does it give the District any

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102 *Hearings Before Subcomm. on Const'l Amend. of the Senate Comm. on the Judiciary*, 87th Cong., 2d Sess. 72 (1962) (letter of Senator Francis Case).

103 MADISON'S DEBATES, *supra* note 13, at 573.

104 Indeed, Madison's notes of the convention suggest that the proviso was one condition of the small states' approval of the Constitution: ". . . being dictated by the circulating murmurs of the small states, [the proviso] was agreed to without debate . . . ." *Id.* at 575.

105 S. REP. No. 507, 67th Cong., 2d Sess. 16 (1922).

more voting power than that to which any new state would be entitled.

Finally, nominal statehood would not necessarily and inevitably open the door to territorial representation. "State" has been read in at least one constitutional provision to include the District but exclude a territory, the Virgin Islands.[106] Moreover, the structure of territorial status precludes such representation. For constitutional purposes, territories are regarded as either "incorporated" into the United States or "unincorporated."[107] "Unincorporated" territories are regarded as belonging to rather than part of the United States, and thus could hardly be considered "states" for any constitutional purpose.[108] "Incorporated" territories have been regarded as part of the United States for constitutional purposes, but all territories which have won "incorporated" status in the courts have since become states (*e.g.*, Alaska and Hawaii), so that, apparently, all present territories are unincorporated.[109]

Some of the present territories could, presumably, eventually become incorporated. But even for incorporated territories, nominal statehood under article I, section 2 and the 17th amendment would be inappropriate. For such territories, actual statehood is a "preordained end," for which territorial status is but a preliminary pupilege.[110] Nominal statehood for congressional representation would telescope the transitional period so carefully planned by the framers, in contradiction of the gradualism which is the chief characteristic of the transition or "period of ineligibility," as the Court has called it.[111] Nominal statehood therefore seems singularly inappropriate for incorporated territories. More-

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106 The 6th amendment was so read in Callan v. Wilson, 127 U.S. 540 (1887); Government of the Virgin Islands v. Bodle, 427 F.2d 532 (3d Cir. 1970).

107 "Incorporation" of territories is a judicial concept developed by the Supreme Court after the Spanish-American War to deal with "the difficult problem of the extent to which the guarantees of the Constitution applied to newly acquired territories." Smith v. Gov't of Virgin Islands, 375 F.2d 714, 717 (3d Cir. 1967).

108 *See* Balzac v. Puerto Rico, 258 U.S. 298 (1922) (holding that Puerto Rico is an unincorporated territory so that its residents are not entitled to the protections of the 6th amendment).

109 86 C.J.S. *Territories* 12 (1973).

110 District of Columbia v. Carter, 409 U.S. 418, 431 (1973); Balzac v. Puerto Rico, 258 U.S. 298, 311 (1922) (incorporation is a "step leading to statehood").

111 O'Donoghue v. United States, 289 U.S. 516, 537 (1933).

over, it is unnecessary; if representation for such territories is required to achieve some constitutional purpose and the territories are ready for it, the Constitution has provided a means for achieving it: formal admission into the union. Since actual statehood is the object of territorial pupilege, it seems to be the exclusive means for achieving representation for the territories.

Conclusion

It has been the purpose of this article to suggest that conventional thinking about congressional representation for the District of Columbia has not adequately canvassed the constitutional possibilities. The theory of nominal statehood — that "state" may in some constitutional provisions have reference to more than just the familiar 50 jurisdictions — suggests a much more subtle and complex question than has been asked heretofore. In giving meaning to "state" in the context of article I, section 2 and the 17th amendment, one should seek a definition which reflects the intent of the framers and serves the broad purposes for which the Constitution was written.

The history of article I, section 8, clause 17, and of the legislation ceding and establishing the District, suggest that denial of congressional representation to District residents was neither necessary to effect the constitutional purpose nor desired by those involved. Rather the problem was not clearly perceived until the damage was done. If no constitutional purpose is served by exclusion of the District, the broader principles of representative government which the Constitution is meant to effect favor making the District a nominal state for purposes of congressional representation.

The analysis here has also suggested that such an application of the theory of "nominal statehood" would not undermine the District's subordination to the exclusive legislative authority of Congress, violate the states' equal protection in the Senate, or open the door to territorial representation. It hardly needs mention that nominal statehood for congressional representation would not automatically trigger any other constitutional provision on behalf of the District. Nominal statehood is a theory

of constitutional construction which emphasizes that "state" status for the District varies with the constitutional context.

The evidence and argument presented here in support of the District's nominal statehood for the purpose of representation is far from overwhelming. But the significance of representation for the people of the District dictates a reconsideration of the conventional analysis of the representation problem. If this preliminary reconsideration seems distortive of the Constitution's language, one might recall that the Supreme Court, in its exegesis of civil rights and liberties, has long signalled a willingness to treat the constitutional text as a remarkably flexible document. That "state" should be so flexed to achieve District congressional representation may not be obvious; but neither can the proposition be summarily dismissed.

APPENDIX 3

DEMOCRATS OF AMERICA

1625 Massachusetts Avenue, N.W. • Washington, D.C. 20036

PRESIDENT
C. Sherry Immediato, Massachusetts

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Jonathan Vinson, New York

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Kelin Leonard, Illinois

INTERNATIONAL SECRETARY
Joel Bergsma, Colorado

GENERAL COUNSEL
William M. Sloane

EXECUTIVE DIRECTORS
Michael A. Forti
Kenneth D. Simon

July 21, 1977

George Washington University and
District of Columbia Federation of
College Democrats
Marvin Center Room 431
George Washington University
Washington, D.C. 20052

Representative Don Edwards
Chairman, Subcommittee on Civil and
Constitutional Rights
Committee on the Judiciary
House of Representatives
Washington, D.C. 20515

Dear Representative Edwards,

The George Washington University College Democrats and the District of Columbia Federation of College Democrats are a part of Self-Determination for D.C. In accordance with our strong sentiments on full Congressional voting representation for the District of Columbia, we submit the enclosed written testimony for your subcommittee to consider.

Sincerely,

Glenn E. Cravez

Glenn E. Cravez
President, George Washington University
College Democrats

Our nation is guilty of practicing a gross double standard. Americans in the fifty states and the District of Columbia fight in wars declared by Congress. Americans in the fifty states and the District of Columbia pay federal taxes levied by Congress. Coupled with these responsibilities, Americans in the fifty states have the right and the power to participate in the workings of Congress. We Americans in the District of Columbia share this right. However, we have been denied the power to practice this right.

Our right to full Congressional voting representation has been overlooked for more than 175 years. During this period, scores of Constitutional amendments designed to remedy this inequity have been offered and rejected, usually without the courtesy of a floor vote. All of the arguments, pro and con, have been repeated on numerous occasions. We have no desire to reiterate the obvious link between full voting representation and fundamental democratic principles.

We wish instead to direct our appeal from the perspective of citizen confidence in Congress and in the government. Confidence has been undermined in recent times by tragic events- Vietnam, Watergate, the C.I.A. revelations, the Korean scandal, etc. Our nation and its people are undergoing a period of convalescence. The people crave to believe and place trust in their public officials. This is hindered, however, by the widespread notion that the

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government is far removed from the citizenry; perhaps democracy is not now applicable as it was at the time of Jefferson, the contention holds.

The government must take action to soothe this cynicism and despair. The Congress, established as the most democratic of our national institutions, should be at the forefront of this drive. The Congress can improve its credibility rating by more closely emulating its democratic ideal. Granting full voting representation to the 700,000 citizens in the District of Columbia is an obvious step in the right direction.

Residents of the nation's capital have already waited too long for the enforcement of their right to full representation. Now is the tire for Congress to respect the voting rights of Washingtonians. Now is the time for Congress to earn the respect of Washingtonians.

SHERMAN DYE
12700 LAKE AVE
CLEVELAND OH 44107

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ODN EDWARDS
2329 RAYBURN HOB
WASHINGTON DC 20515

NATIONAL PTA SPEAKING FOR ITS 6 AND 1/2 MILLION MEMBERS, INCLUDING THOSE RESIDING IN THE DISTRICT OF COLUMBIA URGES THE ENACTMENT OF A CONSTITUTIONAL AMENDMENT TO PROVIDE FOR REPRESENTATION OF THE DISTRICT OF COLUMBIA IN CONGRESS. WE ASK THAT YOUR SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS INCLUDE IN ITS HEARING RECORDS THIS PTA STATEMENT, WHICH HAS LONG BEEN A PLANK IN OUR LEGISLATIVE PROGRAM.

MRS JEAN DYE
VICE PRESIDENT FOR LEGISLATIVE ACTIVITY
NATIONAL PTA
12700 LAKE AVE
CLEVELAND OH 44107

22:28 EST

MGMCOMP MGM

RONALD M. ENG
PROJECT OFFICER

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3817 Beecher Street, N.W.
Washington, D.C. 20007
July 27, 1977

The Honorable Don Edwards, Chairman
Subcommittee on Civil and Constitutional Rights
of the House Judiciary Committee
2329 Rayburn House Office Building
Washington, D.C. 20515

My Dear Mr. Chairman:

Having moved to the District of Columbia in November 1975 to accept a position on the professional staff of the National Research Council of the National Academy of Sciences/National Academy of Engineering, I have become increasingly aware that I lost the exercise of a right by moving to the Nation's Capital that I would not have lost by moving to any other geographical area within the boundaries of our original thirteen colonies.

Thus, I am pleased to have your notice of this opportunity to submit individual testimony for the record of your Hearings on the concept of full voting representation in both Houses of Congress for the residents of the District of Columbia, as provided for by H.J.Res. 139. Given my technical training (B.M.E. - Stevens Institute of Technology; M.S.E. - Princeton University, Registered Professional Engineer in the State of Illinois, and doctoral level studies at SUNY at Stony Brook and Northwestern University), I am concerned that gains in international cooperation fostered through U.S. achievements in the "Space Race" and the "Strategic Arms Race" may be eroded by Soviet counter moves in the escalated "Human Rights Race" through awareness of the near colonial status of the residents of the Nation's Capital. This is the focus of the enclosed testimony.

The bipartisan Congressional and broad civic support for full voting representation is most encouraging. However, while my statements may be flavored by my association with groups such as the Coalition for Self-Determination for D.C., the League of Women Voters, Common Cause, ADA and the ACLU, the enclosed testimony should not be considered as the official representation of the views of these or other groups in which I hold membership or affiliation.

Sincerely,

Ronald M. Eng

Ronald M. Eng, P.E.

RME:ddg

Enclosure

cc: Interested Parties

3817 Beecher Street, N.W.
Washington, D.C. 20007
July 27, 1977

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Subcommittee on Civil and Constitutional Rights
of the House Judiciary Committee
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Having moved to the District of Columbia in November 1975 to accept a position on the professional staff of the National Research Council of the National Academy of Sciences/National Academy of Engineering, I have become increasingly aware that I lost the exercise of a right by moving to the Nation's Capital that I would not have lost by moving to any other geographical area within the boundaries of our original thirteen colonies.

Thus, I am pleased to have your notice of this opportunity to submit individual testimony for the record of your Hearings on the concept of full voting representation in both Houses of Congress for the residents of the District of Columbia, as provided for by H.J.Res. 139. Given my technical training (B.M.E. - Stevens Institute of Technology; M.S.E. - Princeton University, Registered Professional Engineer in the State of Illinois, and doctoral level studies at SUNY at Stony Brook and Northwestern University), I am concerned that gains in international cooperation fostered through U.S. achievements in the "Space Race" and the "Strategic Arms Race" may be eroded by Soviet counter moves in the escalated "Human Rights Race" through awareness of the near colonial status of the residents of the Nation's Capital. This is the focus of the enclosed testimony.

The bipartisan Congressional and broad civic support for full voting representation is most encouraging. However, while my statements may be flavored by my association with groups such as the Coalition for Self-Determination for D.C., the League of Women Voters, Common Cause, ADA and the ACLU, the enclosed testimony should not be considered as the official representation of the views of these or other groups in which I hold membership or affiliation.

Sincerely,

Ronald M. Eng

Ronald M. Eng, P.E.

RME:ddg

Enclosure

cc: Interested Parties

TESTIMONY OF RONALD M. ENG, P.E. July 27, 1977

SUBMITTED FOR THE RECORD OF HEARINGS ON H.J.RES. 139 BEING CONDUCTED BY THE SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS OF THE HOUSE JUDICIARY COMMITTEE

On the Potential Soviet Threat to the U.S. Position in the "Human Rights" Race

The identification and analysis of alternative "war game" scenarios based upon interpretations of varying levels of capabilities and responses are important tools of the strategic arms race. In like manner, it can be argued that U.S. escalation of international activity in the area of "Human Rights" impells that as forthright an understanding of potential counter attacks by the Soviet Union be undertaken. As part of that continuing dialogue, the following scenario is offered of potential Soviet analysis and utilization of the awareness that, had the Watergate impeachment proceedings progressed to a Congressional vote, the residents of the capital of the U.S., the District of Columbia, would not have been represented in that historic act. Thus, the Congress' recent electrification of the world regarding the flexibility and strength of the American system of checks and balances by its handling of the Watergate affair may have been the fortuitous occasion for exposing to world attention the fact that the residents of the nation's capital are not fully represented in the National Legislature. It is the thesis of this analysis that continuation of "calculable supremacy" in our "Human Rights" race with the Soviets for the minds and allegiances of the peoples of the world requires strong consideration of the powerful statement that successful passage of the concept of full voting representation for the residents of the District of Columbia in the U.S. Congress (as provided by H.J.Res. 139) would make regarding the healthy status of our national partiality for universal justice.

In order to dramatize the points, please imagine the following hypothetical "issue memo" excerpt:

Background Scenario Analysis: More specifically, if Mr. Brezhnev reads the Helsinki Accords in the light of his research into this uniquely American Situation, his eyes would probably pop at the words, "The participating states will...promote and encourage the effective exercise of civil, political, economic, social, cultural and other rights and freedoms". Given its emphasis on "effective exercise", it is foreseeable that he would wag his finger at the finding that fully tax paying, "non-dissident" citizens that are residents of the Capital of the United States - the District of Columbia - still do not have the effective exercise of the voice of voting Senators and Representatives in their national legislature even though the American Revolution was fought on the theme that "taxation without representation is tyranny".

However, while this may form a basis for a low level "pot calling the kettle black" type of retort by Mr. Brezhnev, his research may uncover other perspectives potentially more serious. Item- His research is expected to cite the political creativity of Americans in writing a Constitution that mandated a system of checks and balances on the actions within and among the Legislative, Executive, and the Judicial Branches. Given the political sophistication involved, he might view the lack of equal opportunity for D.C. residents to petition voting legislators on such matters as Senate approval of Justices of the Supreme Court and other high level Executive Branch Officials and House initiation of all revenue measures to be an ingenious form of political repression (viz., one that does not involve the use of physical force) of a population concentration whose numbers exceed that of ten other American States. Item- His researchers will probably highlight that D.C. residents must bear the same full responsibilities of citizenship as do the other U.S. citizens and yet are still struggling for the right to full participation

On the Potential Soviet Threat to the U.S. Position in the "Human Rights" Race

in the political mechanisms available for the determination of those responsibilities. Given this, he may interpret statements denying D.C. residents full voting representation on the basis that they live in a "special entity" - the District - and not a "state" to be akin to nonviolent brainwashing or at least a form of virulent discrimination based on place of residence. Item- His research is expected to note that Americans have a long heritage of actions that effectively say that governmental assurances of "human rights" and "freedoms" may be hypocritical if not bolstered by full citizen participation in the political mechanisms for determining the limits of those "rights" or "freedoms". E.G., slaves were not only "freed" (13th Amendment) but given the right to vote (15th Amendment), women were given the right to vote (19th Amendment), and 18 year olds were given the right to vote (26th Amendment). However, the aforementioned rights are effectively voided for all residents of D.C. since a full slate of elections in which these rights can be exercised does not exist at this time in the Capital.

Potential Soviet Analysis:
Since the movement for the 18 year old suffrage was partly based upon the concept that acceptance of citizenship responsibilities with respect to military obligations entitled that group to a right to participate in the formulation of national legislation, the continued lack of extensions of this principle to the residents of D.C. who have for longer than 18 years borne the full responsibilities of citizenship may be interpreted as a backward step by the U.S. in its extention of the franchise. Also, since external mechanisms for denial of the vote have also been outlawed (specifically the denial of the right to vote for failure to pay a poll tax or any other tax--24th Amendment); the Soviets may interpret the existence of "uniqueness" along with denial of voting rights to be a new weapon in the arsenal of abridgement of human rights of internal population groups. Namely, "disparate impact" is achieved not by denying the "right to vote," but by limiting the set of offices for which the right to vote can be exercised.

Possible Soviet Thrusts: Given the above Scenario Analysis, the following two initial directions are seen as most likely to be emphasized by Mr. Brezhnev: 1) That U.S. pressure for international "human rights" is a diversionary smoke-screen for the lack of a very sophisticated level of "civil rights" in the Capital of the United States (possible Sovietese - the hypocritical nature of Western emphasis on "human rights" in the international sphere is clear when the "free workers" of the Capital of the United States, the District of Columbia, are politically repressed by being denied full participation in the so-called "free political process" of that decadent country), and 2) The arguments based upon "specialness" just might be turned around to support the thesis that the Soviet Union cannot be in violation of the Helsinki Accords because it is a "union" and not a "state."

Recommended Counteraction: Acceleration of firm Administration and Congressional support for a Constitutional Amendment granting full representation in the U.S. Congress for the residents of the District of Columbia is expected to be a most effective counter to Soviet threats based upon a "plausible credibility gap" in the "human rights of the United States.

Submitted by: Ronald M. Eng, P.E.
For the Record of the Hearings on H.J.Res. 139 being conducted by the Subcommittee on Civil and Constitutional Rights of the House Judiciary Committee

ANC 3E
244-0800

ADVISORY NEIGHBORHOOD COMMISSION 3E
4025 Chesapeake Street, Northwest
Washington, D.C. 20016

Tuesday, September 20, 1977

Honorable Don Edwards, Chairman
Subcommittee on Civil and
Constitutional Rights
Committee on the Judiciary
U. S. House of Representatives
Washington, D. C. 20515

Attention: Ivy L. Davis, Esq.
Assistant Counsel

Dear Mr. Chairman:

Enclosed is the statement of Advisory Neighborhood Commission 3E of the District of Columbia concerning full voter representation for the residents of the District of Columbia. The Commission would appreciate your having our statement made part of the official record of these hearings.

I was fortunate enough to be able to attend last week's hearing, as well as the one on July 25, and was gratified by the kinds of testimony I heard made on our City's behalf. I do hope that you as Chairman of this Committee can assure that these hearings will culminate in a floor vote during this session of the 95th Congress. You'll have an eager, if voiceless, audience, I assure you.

Sincerely yours,

Carol Currie Gidley
Chairperson, ANC 3E

Enclosure

ccs: ANC 3E Commissioners

Ms. Elena Hess, Executive Director
Self-Determination for D. C.

Honorable Walter E. Fauntroy
U. S. House of Representatives

Honorable Polly Shackleton, Member
Honorable Marion Barry, Hilda Howland Mason, Douglas Moore and Jerry A. Moore, Jr., Members-at-Large
Council of the District of Columbia

ANC Information Office, City Hall

ANC 3E
244-0800
ADVISORY NEIGHBORHOOD COMMISSION 3E
4025 Chesapeake Street, Northwest
Washington, D.C. 20016

STATEMENT OF
ADVISORY NEIGHBORHOOD COMMISSION 3E OF THE DISTRICT OF COLUMBIA
BEFORE THE
SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS
COMMITTEE ON THE JUDICIARY, U. S. HOUSE OF REPRESENTATIVES
CONCERNING
FULL VOTER REPRESENTATION FOR THE CITIZENS OF THE DISTRICT OF COLUMBIA
WEDNESDAY, SEPTEMBER 21, 1977

CHAIRMAN EDWARDS, MEMBERS OF THE SUBCOMMITTEE: ADVISORY NEIGHBORHOOD COMMISSION 3E OF THE GOVERNMENT OF THE DISTRICT OF COLUMBIA IS PLEASED TO SUBMIT TO YOU A STATEMENT OF SUPPORT FOR FULL VOTER REPRESENTATION FOR THE CITIZENS OF THE DISTRICT OF COLUMBIA. WE APPRECIATE THE OPPORTUNITY YOU HAVE PROVIDED US TO MAKE THIS STATEMENT ON THE ONE ISSUE WHICH IS OF SUCH VITAL INTEREST TO US ALL. WE WOULD APPRECIATE HAVING THE STATEMENT MADE A PART OF THE OFFICIAL RECORD, AS WELL. THE COMMISSION HOPES AND EXPECTS THAT AT THE CONCLUSION OF THESE HEARINGS, THE MATTER WILL BE SWIFTLY BROUGHT TO THE FLOORS OF BOTH HOUSES OF THE UNITED STATES CONGRESS FOR VOTE AND PASSAGE.

ADVISORY NEIGHBORHOOD COMMISSION 3E IS THE ELECTED BODY OF OFFICIALS WHO SERVE THE 10,000 CITIZENS OF THE AMERICAN UNIVERSITY PARK AND FRIENDSHIP HEIGHTS AREA IN WARD THREE. THE COMMISSIONERS HAVE TAKEN AN OFFICIAL VOTE IN TOTAL SUPPORT OF FULL VOTER REPRESENTATION FOR THE CITIZENS OF WASHINGTON, AND THIS STATEMENT'S PURPOSE IS TO NOTIFY THE SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS, COMMITTEE ON THE JUDICIARY, THE U. S. CONGRESS.

(M O R E)

MEMBERS OF THE COMMISSION HAVE ATTENDED THE HEARINGS HELD ON AUGUST 3 AND SEPTEMBER 14 ON THIS MATTER, AND HAVE BEEN IMPRESSED AND GRATIFIED BY THE TESTIMONY OFFERED BY AND ON BEHALF OF THE CITIZENS OF THE DISTRICT OF COLUMBIA IN SUPPORT OF OUR RIGHT TO VOTING REPRESENTATION IN THE UNITED STATES CONGRESS. NO ONE SEEMS TO OPPOSE THIS QUEST BY WASHINGTONIANS OF A RIGHT WHICH ALL OTHER AMERICANS NOW POSSESS. STILL, THERE WERE QUESTIONS RAISED BY MEMBERS OF THE SUBCOMMITTEE, QUESTIONS WHICH DISTURB.

THE ISSUE BEFORE THIS SUBCOMMITTEE--AND ULTIMATELY, BEFORE THE ENTIRE CONGRESS--IS NOT A QUESTION OF "RETROCESSION" TO MARYLAND OR ANY OTHER STATE. IT IS NOT A QUESTION OF WHETHER OR NOT THE CITIZENS OF THE ENTIRE NATION WOULD ACTUALLY "ALLOW" THE CITIZENS OF THE DISTRICT OF COLUMBIA TO VOTE. IT IS NOT A QUESTION OF WHETHER OTHER STATES WOULD HAVE TO GIVE UP A "PORTION OF THEIR SOVEREIGNTY" IF WASHINGTON WERE TO HAVE THIS RIGHT. THE ISSUE IS A SIMPLE QUESTION OF JUSTICE. AN AMERICAN RIGHT. A HOLY RESPONSIBILITY. IT IS A QUESTION OF WHETHER THIS 95TH CONGRESS PLANS TO ASSUME ITS LEADERSHIP ROLE AND LEAD THE TOTAL EFFORT TO GIVE WASHINGTON, D. C. FULL VOTER REPRESENTATION IN BOTH HOUSES OF THE CONGRESS. IN THIS COMMISSION'S OPINION, IT IS THE RESPONSIBILITY OF EACH AND EVERY MEMBER OF CONGRESS TO GO HOME TO HIS OR HER CITIZENS AND TELL THEM THAT THE CITIZENS OF THE DISTRICT OF COLUMBIA INDEED DO NOT HAVE THE RIGHT THAT THEY THEMSELVES HAVE, AND THAT THIS IS THE VERY REASON WHY THAT CONGRESSMAN, CONGRESSWOMAN OR SENATOR WILL VOTE A RESOUNDING AYE TO FULL VOTER REPRESENTATION FOR THE CITIZENS OF THE DISTRICT OF COLUMBIA IN THE CONGRESS. BECAUSE THERE IS NO REASON TO DENY IT.

SOME HAVE SAID THAT WE'RE THE LAST COLONY. OTHERS HAVE SAID THAT WE'RE REALLY THE LAST PLANTATION. STILL OTHERS HAVE SAID THAT CONGRESS IS AFRAID TO LET GO ITS REINS AND PERMIT WASHINGTON TO SPEAK FOR ITSELF. THERE MAY BE SOME TRUTH IN ALL OF THIS. REGARDLESS, THIS COMMISSION BELIEVES THAT THE BASIC, FUNDAMENTAL RIGHT TO VOTING REPRESENTATION IS THE TRUE AND ONLY ISSUE INVOLVED HERE, AND THAT THAT RIGHT IS BEING DENIED THE 720,000 CITIZENS OF OUR CITY.

THE CITIZENS OF WASHINGTON LOOK TO THIS, THE 95TH CONGRESS, AND TO THIS SUBCOMMITTEE ESPECIALLY, TO CHANGE THIS SHAMEFUL SITUATION. WE INSIST ON FULL VOTER REPRESENTATION FOR ALL OUR CITIZENS AND WE INSIST THAT THIS SUBCOMMITTEE AND THIS CONGRESS ASSUME THE LEADERSHIP IN THIS ACTION BY GIVING US WHAT IS OUR RIGHT. AS AMERICA BEGINS HER 201ST YEAR WITH FULL VOTING RIGHTS, LET HER CAPITAL, WASHINGTON, D. C., BEGIN HER FIRST.

RESPECTFULLY SUBMITTED,
FOR ADVISORY NEIGHBORHOOD
COMMISSION 3E OF THE DISTRICT OF COLUMBIA.

Carol Currie Gidley

CAROL CURRIE GIDLEY
CHAIRPERSON

CCS: ALL MEMBERS OF
THE HOUSE JUDICIARY SUBCOMMITTEE
ON CIVIL AND CONSTITUTIONAL RIGHTS

aclu

AMERICAN CIVIL LIBERTIES UNION OF THE NATIONAL CAPITAL AREA
1345 E STREET, N.W., SUITE 301 • WASHINGTON, D.C. 20004 • (202) 638-6263

October 11, 1977

Honorable Don Edwards
Chairman, House Judiciary Subcommittee
on Civil and Constitutional Rights
House Office Building, Annex #1
Room 407
Wsshington, D.C. 20515

Dear Mr. Chairman:

The American Civil Liberties Union of the National Capital Area, on behalf of its over six thousand members, wishes to express its strong support for full voting representation in Congress for the citizens of the District of Columbia.

Voting representation clearly is mandated by our most fundamental precepts of self-determination and full democratic representation of the governed. Three-quarters of a million Americans who reside in the District have been denied their proper voice in Congress, even though District residents pay more than $1 billion in Federal taxes, with a per capita tax payment $77 above the national average; even though the 1970 population of the District of Columbia was larger than that of ten states, and of each of the original thirteen states at the time of its admission into the Union; and even though the Constitution itself nowhere provides for a denial of such representation. As a substantial majority of House Members recognized by their vote last term, a denial of fundamental rights of this nature no longer should be tolerated.

ACLU wishes to draw attention, however, to certain potential difficulties with the technical wording of H.J. Res. 554, now pending to the Committee. As currently worded, this Resolution (like other Resolutions previously

before the Committee) provides that voting representation is to be granted to the people of the "seat of government of the United States". If an Amendment so worded were to be added to the Constitution, it might create unexpected obstacles to District statehood, and other measures necessary to achieve full self-determination for the people of the District. */

These difficulties can be overcome by striking the phrase "constituting the seat of government" from both Section 1 and Section 2, and substituting in its place, in both instances, the phrase "which presently constitutes the seat of government".

Sincerely,

Diana H. Josephson

Diana H. Josephson
Executive Director

DHJ:1

*/ From time to time it has been argued that statehood for the "seat of government" is barred by Article III, § 8, Clause 17 of the Constitution, which grants "exclusive legislative authority" over this "seat" to Congress. Even if Clause 17 were to be so construed, however, if Congress were to vote to reduce the size of the "seat of government" (as it has done on at least three occasions in the past), and then vote to declare statehood for these portions of the District which had been excluded from the "seat of government", Clause 17 would not apply. However, if an Amendment providing for voting representation for the "seat of government" had been added to the Constitution before statehood had been declared, the territories which remained part of the "seat of government" no matter how limited they might be in size, arguably still would be entitled to voting representation in Congress - a result which clearly would be unacceptable, and which might be demmed to require yet another Constitutional Amendment before statehood could be granted.

EDWARD M. KENNEDY
MASSACHUSETTS

United States Senate

WASHINGTON, D.C. 20510

August 3, 1977

Chairman Don Edwards
Subcommittee on Constitutional
and Civil Rights
407 House Annex No. 1
Washington, D.C. 20515

Dear Mr. Chairman:

As previously discussed with your Subcommittee staff, I am hereby submitting my testimony on today's hearing on H.J. Res. 139 and other Constitutional amendments for congressional representation for the District of Columbia.

Again, I wish to reiterate my support for H.J. Res. 139.

Sincerely,

Edward M. Kennedy

Enclosures

T E S T I M O N Y

on

FULL VOTING REPRESENTATION FOR THE DISTRICT OF COLUMBIA

Submitted By

SENATOR EDWARD M. KENNEDY

To The

SUBCOMMITTEE ON CONSTITUTIONAL AND CIVIL RIGHTS

Mr. Chairman, I thank you and the members of the Subcommittee on Constitutional and Civil Rights for the opportunity to express my strong interest and commitment in achieving full voting representation in the Congress for the citizens of Washington, D.C.

Three-quarter of a million citizens who live on the doorstep of democracy do not have full voting representation.

The issue before us is one of basic equity. The members of this 95th Congress have an obligation to remedy this denial of civil rights.

I have on three occasions since 1971 offered constitutional amendments that would empower Washingtonians to have full voting representation in the Congress. On June 21st of this year, I introduced a resolution to amend the U.S. Constitution to provide full voting representation in Congress for the District of Columbia. S. J. Res. 65, the full voting resolution which I introduced is identical to Congressman Fauntroy's House Joint Resolution 139 and contain the following provisions:

First, citizens of the District of Columbia would elect two Senators and two Representatives in Congress.

Second, each Senator and Representative would be required to be a resident of the District of Columbia.

Third, each Senator and Representative would possess the same qualifications as to age and citizenship and have the same rights, privileges and obligations as other Senators and Representatives.

Fourth, a vacancy in the representation of the District of Columbia in the Senate or in the House of Representatives would be filled by a special election by the voters of the District.

Fifth, the amendment would have no effect on the provision in the twenty-third amendment for determining the number of electors for President and Vice President to be appointed for the District.

Sixth, Congress would have the power to implement the amendment by appropriate legislation.

Though the merits of the argument for District of Columbia representation in Congress are so well known -- and so overwhelming -- I believe it would still be useful for me to reiterate them again today. Time after time, the facts and arguments for District of Columbia representation have been set out in detail. The tragic history of 90 years of efforts to achieve this goal is well known.

Efforts to obtain voting representation were thwarted in March 1971, on the floor of the Senate. At that time, I had brought before the Senate a congressional representation resolution to be considered as part of the 18-year-old voting amendment. The timing seemed especially significant because the District of Columbia was preparing to choose a nonvoting Delegate to the House of Representatives on the very next day. I chose the 18-year-old vote amendment as a suitable vehicle to bring real democracy to the people of Washington, because it had been demonstrated all too forcefully in the past, that the District of Columbia proposal standing alone would not be reported by the Senate Judiciary Committee, or by the House Rules Committee. The endless arguments that the District of Columbia measure would kill the 18-year-old vote amendment were baseless. For the attention of the Nation was firmly fixed upon the Senate's efforts to extend the franchise for millions of young Americans throughout the Nation. Extending full voting rights to the 760,000 residents of our Capital City was clearly an appropriate direction in which we could have moved. Each State would have been required to ratify the two amendments separately.

With the overwhelming support of 86 Senators, the 18-year-old vote amendment was in no way jeopardized by the District of Columbia measure. Yet, 68 Senators voted to scuttle my proposal to add the District of Columbia vote to the 18-year-old provision. And so it is, that once again, the citizens of the District of Columbia were denied the chance to exercise the most fundamental expression of democracy -- the right to choose their own representation in the National Legislature.

To continue that delay is not only inequitable but it can mean a different world for every resident of Washington.

As I introduce this resolution in this 95th Congress and urge my colleagues to bring the congressional vote to the Capitol, I would like to rebut a number of arguments that have been made against this worthwhile proposal:

First, overhanging the entire debate is the specter of racism and partisan politics. I raise these two arguments only to rebut them, because they cannot stand the light of day. No Senator -- whatever party -- would vote against the citizens of the District for these reasons.

Second, it is said that the District of Columbia amendment deserves careful study. When I first introduced this measure in 1971, I described in detail the history of efforts to achieve voting representation in Congress for the District of Columbia.

The first constitutional amendment to win this goal was introduced in Congress in 1888. Since that date, hundreds of different amendments have been introduced in Congress, and dozens of hearings have been held by Senate and House committees over the years. The scenario is always the same. Inevitably, the hearings generate overwhelming support for the District of Columbia amendment. And, just as inevitably, every effort meets with uniform frustration and defeat.

At the beginning of June 1970, the Senate Subcommittee on Constitutional Amendments held hearings on the District of Columbia amendment. Under the leadership of Senator Birch Bayh, one of the most distinguished and long-standing advocates of the cause of District of Columbia representation, the hearings again developed virtually unanimous support for the District of Columbia amendment. Over the period of the next several weeks, because of its inability to obtain a quorum, the subcommittee was continuously thwarted in its effort to report the amendment favorably. Finally, when the subcommittee was able to muster a quorum at the end of July, Senator Bayh's motion to bring up the District of Columbia amendment for debate and action was blocked by the objection of several members of the subcommittee, and the amendment was effectively killed for that Congress.

On the face of this dismal record, unbroken since the District of Columbia amendment was first proposed in the 19th century, can we really maintain that it needs more debate? I submit that 90 years is long enough.

22-873 O - 78 - 14

Third, it is said, only 6 years ago Congress gave the District a nonvoting Delegate and this is enough of an accomplishment for the time being. It is nothing of the sort. The nonvoting Delegate is not an end in itself. The only real value it has is as an interim measure, a half-way house to tide us over the brief period while a constitutional amendment for full representation is enacted by Congress and ratified by the States.

Now that the nonvoting Delegate is a reality, we must fix our attention on the true goal. We must adopt a constitutional amendment for full voting representation for the District, and submit it to the States for ratification. There could be no more ideal result than for the District to have active voice and benefit of the nonvoting Delegate as a forerunner in the present Congress, to lay the foundation for the voting Senators and Congressmen who will come after him.

The one thing we cannot do is to allow the status of the interim Delegate to deteriorate into that of a permanent nonvoting representative. At last, we have a good chance of success, if only we keep our sights high, and do not relax our effort before the job is done.

Fourth, some opponents of representation for the District of Columbia claim that the amendment would treat the District as a State. They say that the District is not a State but a city, smaller than at least eight other cities in the Nation, and that there is no greater reason for this city to be represented in Congress than larger cities which are denied the right. This argument ignores the obvious fact that other American cities are political subdivisons of States, which are already represented in both the Senate and the House of Representatives.

Moreover, for years, the District of Columbia has traditionally been treated as a State in virtually every major Federal grant legislation. In program after program, in statute after statute, all of us in Congress are familiar with the well-known clause" "For the purposes of this legislation, the term 'State' shall include the District of Columbia."

This argument against District of Columbia representation is heard most frequently in relation to the Senate. The objection is raised that only States should be represented in the Senate. I share the strong concern of the Members of this body for the traditions and prerogatives of the Senate, but I feel a

stronger concern against the injustice of denying a substantial group in our population the right to participate in making the laws by which they are governed. Vital legislation affecting the lives of all the citizens in the Nation is debated in every session of the Senate. Until the people of the District are represented in the Senate as well as in the House, they will not have the right to true self-government that is the birthright of every American citizen.

In addition, by accepting two Senators for the District of Columbia as part of the amendment, the Senate itself will be demonstrating its good faith to the House. Too often, the Senate has been generous in proposing representation in the House for the District of Columbia, but reluctant to invite the District into the well of the Senate itself.

Can we really maintain that the citizens of the District are doomed to a perpetual colonial status, to denial of the most basic right in civilized society -- the right that is preservative of all other rights, the right of self-government? Surely this is too high a price to pay for preserving the traditions and pererogatives of the Senate.

Nothing in our Constitution or its history supports the interpretation that the District of Columbia was intended to be denied representation in both the Senate and the House. Indeed, in the Federalist, No. 43, James Madison, one of the principal architects of the Constitution, wrote that the prospective inhabitants of the Federal city "will have had their voice in the election of the Government which is to exercise authority over them." Clearly Madison was assuming that the citizens of the Nation's Capital would be represented in Congress.

Fifth, another, even less persuasive, objection to District of Columbia representation in Congress rests on the provision in Article V of the Constitution, which declares that --

> No State, without its consent, shall be deprived of its equal suffrage in the Senate.

It is far too late in our history to argue that the admission of the District of Columbia to representation in Congress would deprive any State of its "equal suffrage in the Senate." In light of the history of the Constitution and the precedents under it, the meaning of Article V is clear -- no single State may be given a larger number of Senators than any other State.

This was the essence of the Federal compromise at the Constitutional Convention in 1787. It has guided us for 200 years, and it is intended to endure throughout our history. This is all that Article means, and all that it requires.

In addition, Article V has never been read as prohibiting the representation of new States in the Senate, even though -- obviously -- the admission of a new State dilutes the voice and power of the existing States in the Senate. Indeed, since the ratification of the Constitution by the original 13 States, 37 new States have neen admitted to the Union. As a result, the power of the original 13 States in the Senate has been diluted nearly fourfold, from 2 to 26 to 2 to 100. Yet, no one has ever argued that any of the original 13 States has been deprived of its equal suffrage in the Senate.

The principle is clear. So long as the District of Columbia is represented in the Senate no more advantageously than any State, it cannot be said that representation for the District deprives any States of its equal suffrage in the Senate. Each State will still have two votes in the Senate, and each State will still have the same proportionate vote as any other State.

As I have attempted to show, the arguments against full voting representation in Congress for the District of Columbia have no merit, especially in light of the grave injustice that is being perpetuated against the citizens of the District. Today, the United States stands virtually along among the democratic nations of the world in denying representative government to the people of its Capital City. The citizens of Washington deserve to share in the right of self-government the birthright of every American citizen. I urge the Senate to establish this symbol of our commitment to our heritage and to the cause of freedom, equality, and justice for all our citizens.

In 1977, this country guided by a new President asserted moral leadership in the world-wide community. Governments from Russia to Rhodesia were challenged to begin seriously thinking about the denial of basic human rights to citizens that exist within their borders.

In South America, Eastern Europe, Asia and South Africa, the Administration backed by Congress not only made a pledge to human rights, but also took affirmative steps to help secure the same.

It is encumbent on us to make certain that this country's resumption as a world leader for human rights begins at home. Nowhere in America should the principles of democracy be more firmly established than in the nation's capitol. In Washington today, however, democracy is weakest where it should be strongest. The sad truth is that the District of Columbia is still the last bastion of taxation without representation in the United States.

Mr. Chairman, it is my firm hope that this new Congress will bring an end to the shameful denial of the fundamental right to vote for the residents of Washington, D.C. and provide a positive example to other nations where basic human rights are still being denied.

THE BAR ASSOCIATION
OF THE DISTRICT OF COLUMBIA

1819 H STREET, N.W.
WASHINGTON, D.C. 20006
(202) 223-1480

October 11, 1977

The Honorable Don Edwards, Chairman
Subcommittee on Civil and Constitutional Rights
Committee on the Judiciary
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I write as chairman of the District of Columbia Affairs Section of the Bar Association of the District of Columbia, a voluntary organization of lawyers practicing in the District of Columbia. The Association through its Board of Directors has endorsed House Joint Resolution 139 and authorized me to address the Committee either in person or in writing on this subject.

The legal objections to HJ Res.139 are few and I will deal with those in this letter, but I would like first to address myself to the real issue that is before your Committee, and that is: Should the District of Columbia as a matter of public policy have full voting representation in the House and two Senators in the Senate just as if it were a state? The answer to that question is so obviously in the affirmative for so many different reasons that one hardly knows where to begin.

However, if one is to begin at the beginning, then that would take us back to the days of the Continental Congress and June 1783 when the delegates in Philadelphia were beseiged by mutineers of the Revolutionary Army and the Pennsylvania authorities either failed or refused to provide protection that the assembled delegates felt they should have. From that event grew the idea of a separate federal enclave under the control of Congress and from that concept grew the District of Columbia. Whatever the District of Columbia was in 1800, it is certainly a lot different today with something over 700,000 people and the center of a metropolitan area of millions. The concept of a federal enclave in 1783 in no way rules out the possibility of representation of the residents of that enclave in the Congress. What was an oversight affecting a few people, most of them then in the old cities of Georgetown and Alexandria (who voted for President in 1792 and 1796 as residents of Maryland and Virginia)

has now become an enormous injustice. That the residents of this city should have direct representation in Congress is consistent with the views and ideals of the framers of our Constitution as well as those ideals for which we stand today throughout the world.

The fact that the city has grown to its present population means that it is now larger than seven states (according to the 1975 Statistical Abstract of the United States). Those are Alaska, Delaware, Nevada, North Dakota, South Dakota, Vermont and Wyoming. It is very close in population to Hawaii, Idaho, Montana, New Hampshire and Rhode Island, all of which have less than one million persons as of 1975, but all of which have their appropriate representation in the House and in the Senate.

It has been said that the District of Columbia being the recipient of so much federal largesse, including the federal payment, ought not to complain about its disenfranchisement. If that is true, then twenty-four states ought to cancel their representation in the House and in the Senate. Again looking at the 1975 Statistical Abstract (page 296) the total of federal grants to the following states exceeds those to the District of Columbia including the federal payment: Alabama, California, Connecticut (Connecticut's federal grants are exactly the same as the District of Columbia), Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Tennessee, Texas, Virginia, Washington and Wisconsin.

Another comparison that is interesting is federal employment other than military (no one seriously argues that the city of Washington has a large military establishment, most of it, of course, being across the river in Virginia). The city has less civilian employees than California by 95,000 and only 30,000 more federal employees than the state of New York. Moreover, the federal civilian employment in the District of Columbia suburbs of Maryland and Virginia is 143,000 as opposed to 205,000 within the city itself. It should not be assumed, therefore, that the federal establishment has confined itself to the District of Columbia and for that reason by some illogical process it should remain disenfranchised.

The city of Washington contributes more than its per capita share through federal taxes to the federal treasury. According to the Statistical Abstract (page 244) based upon returns filed with the Revenue Service in 1974

the total amount paid by the District of Columbia residents exceeded twelve states -- Alaska, Delaware, Idaho, Maine, Montana, Nevada, New Hampshire, New Mexico, North Dakota, South Dakota, Vermont and Wyoming -- and its per capita contribution to the federal treasury was higher than all but eight states.

These comparisons could go on almost for as many pages as there are in the Abstract. The point is that the District of Columbia compares very favorably to the States in every respect. It is no different than other places. It has its peculiarities because of its connection with the federal government, but there isn't a State that doesn't have some other peculiarity which makes it somewhat different than its neighbors. There is simply nothing that is particular to the District of Columbia by way of its population or its contribution to the federal treasury or in any other respect that would preclude it as a matter of public policy from having its residents join their fellow citizens in representation in the halls of Congress.

It is perhaps another misconception of some, that the citizens of the District of Columbia really don't care or want to have Congressional representation or that this idea is somehow of recent vintage and is the concoction of a minority of activists riding the wave of change that we have all watched through this decade and the last. That is simply and totally untrue. I have, through the help of a longtime resident, Harry Wender, Esq., gone back into files on the question of the District of Columbia home rule and Congressional representation which contains some interesting facts. The first indication of an attempt to rectify the peculiar situation of the residents of the District of Columbia with respect to Congressional representation occurred in 1801. In that year a constitutional amendment was proposed to give the District of Columbia one senator and a vote in the Electoral College for president and vice-president. More recently, in this century, the effort goes back well into the Twenties and some members of Congress will recall that in 1938 a referendum was held on the subject of local self-government and Congressional representation. The sampling at that time indicated an overwhelming vote of better than 8 to 1 for local self-government and better than 11-1 for Congressional representation. Another referendum was held in the 1940's with similar results. During the 1938 campaign a petition was presented to Congress on behalf of the city for both local self-government and Congressional representation. The lead petitioner was the great champion of District of Columbia causes, Theodore W. Noyes, of the Washington Star, who signed as Chairman of the Citizens

Committee of the District of Columbia. Other organizations joining in the petition were the Board of Trade, Federation of Citizens Associations, the Central Labor Union, the League of Women Voters, the Building & Loan League, the Bar Association (the organization which I represent), the Labor Federation, the Real Estate Board, Veterans of Foreign Wars and approximately fifty other local citizens and business groups covering all of the leaders of the city at that time.* So it can be truthfully said that support for congressional representation in the city of Washington is as old as it is just.

The constitutional arguments with respect to the legality of granting congressional representation to the District of Columbia seem to fall into three categories: One deals with Article V of the Constitution which provides that "No State, without its consent, shall be deprived of its equal suffrage in the Senate," the second with the qualifications for electors contained in Article I, Section 2(1) providing that the electors for members of the House and Senate in each state shall have the same qualifications as those for the most numerous branch of the state legislature, and the third, the filling of a vacancy by the legislature.

The second and third of these objections were centered upon the fact that at one time the city had no legislature at all and some confusion would arise with respect to filling of vacancies and the qualifications of electors, but the city does have a legislature and although Congress has the power to take that legislature away and resume the old ways of passing all of the District of Columbia laws through congressional enactment, that seems most unlikely. In any event, if the city is to have congressional representation by constitutional amendment, that cannot be taken away by an act of Congress. There will continue to be elections in the District of Columbia for House and Senate, even if Congress should decide at some future date that a city government elected by the people is not what it should have.

The objections with respect to Article V disappear when one reads the constitutional language. Persons who have not read it sometimes transpose the language so that the meaning comes out that no state shall be deprived of its proportionate voting power in the Senate. The weakness of that argument is obvious since the language itself does not speak of proportionate representation but merely equal suffrage, meaning two senators from each state regardless how small or large the state may be. If the proportionate representation in the Senate argument were valid, then all of the states admitted to the Union following the initial thirteen would have had to seek the permission of each and every other state. In fact, as is well known, all of the states in the Union following the original thirteen were admitted by congressional enactment, a simple majority vote in each House. Moreover, the same subject has been dealt

* Source: The Evening Star, May 16, 1938

with by the Senate -- the body obviously most concerned with that aspect of District of Columbia congressional representation -- and in each case the answer is the same, viz. that Article V is no bar to this amendment. For example, a Senate committee considering a similar amendment in 1922 stated:

> "The plain meaning of this provision (referring to Article V) is that no State shall have any greater numerical representation in the Senate than any other State. It cannot mean that the aliquot share of the legislative power possessed by a State in any given time cannot be reduced, as the proportion of that power, which was originally 2 as to 26, has now been steadily diminished by the admission of new states until it is now 2 as to 96."

That report went on to conclude:

> "There is no principle of our constitution, much less any specific provision of its articles, which forbids its amendment so as to admit into the Senate as well as into the House, members who shall represent an integral part of the country such as the District of Columbia without requiring that such area shall be for all purposes whatsoever precisely like the existing States. The only limitation is in thus amending the Constitution no State shall be deprived of its suffrage in the Senate, and, as we have already shown, the equality of the States in the Senate will not be in any wise affected by the proposed amendment."*

That same report deals with the other items that I have referred to as possible constitutional objections and in all cases finds in favor of a constitutional amendment.

In conclusion, the only thing that has changed in the District of Columbia from 1800 to the present is the number of people who live here. What was right and proper in 1801 (when, by the way, the City had its own local government) is equally right and proper today. The accidental injustice in depriving the residents of Washington a vote in the House and Senate is now 177 years old. Correction of that injustice lies in the hands of Congress and of your committee in particular.

Respectfully yours,

Neal E. Krucoff, Chairman
District of Columbia Affairs Section

*Senate Report No. 507, 67th Congress 2d Session, February 20, 1922

WOMAN'S NATIONAL DEMOCRATIC CLUB POLITICAL ACTION COMMITTEE
1526 NEW HAMPSHIRE AVENUE, N.W.
WASHINGTON, D.C. 20036

JUL 14 REC'L

July 13, 1977

The Honorable Don Edwards, Chairman
Subcommittee on Civil and Constitutional Rights
Committee on the Judiciary
House of Representatives
Washington, D.C. 20515

Dear Mr. Edwards:

I would appreciate it if the attached statement in support of H.J. Res. 139 could be inserted in the record of the Hearings to be held by your Subcommittee on July 25, 1977.

Very truly yours,

Kay C. McGrath, Chairperson

Statement to be inserted in Hearings on H.J. Res. 139 (Committee on the Judiciary, Subcommittee on Civil and Constitutional Rights), July 25, 1977.

The Political Action Committee of the Woman's National Democratic Club strongly supports H.J. Res. 139, and considers passage of a constitutional amendment providing voting representation for the District of Columbia, in both Houses of Congress, to be a high priority. The Woman's National Democratic Club includes many members who live and vote in the District of Columbia; they, and members with other voting residences, keenly feel the injustice of the existing situation.

The District of Columbia is more than the Federal District. It is a city whose residents pay taxes (in fact, in 1974 they bore a per capita tax burden $79 higher than the national average). It is a city with a population larger than that of ten states of the union. It is a city which constitutes a unique legal entity combining the functions of city, county, and state--a city which has been treated as a state for legal purposes that suited the convenience of the federal government, as in controlling interstate commerce. We see no reason, in logic or in law, why we who live in the District of Columbia should not have representatives in House and Senate to speak for us and vote for us when the laws that govern us--exactly as they govern the inhabitants of the rest of the country--are passed.

Nowhere does the Constitution say that residents of the District of Columbia should be denied representation in the Congress. As the members of this Committee undoubtedly know, historical research has provided considerable evidence that denial of the right to representation stemmed more from neglect than intent; at the time the Constitution was drafted, the District's population consisted of Marylanders

and Virginians, and the Federal District was not designated until 1800. The framers could not have envisaged the city it was to become, but if they had they surely would not have singled out its residents for exclusion from such a fundamental right as representation.

If the Congress can this year give the states the opportunity to ratify this overdue constitutional amendment, swift ratification is likely. The 1961 amendment that finally allowed District citizens to vote for their President was ratified in less than a year. At a time when concern over human rights abroad is particularly salient, we are confident that a majority of United States citizens desire for the residents of the capital of their country this most basic of human rights in a democracy.

Kay C. McGrath, Chairperson
Political Action Committee
Woman's National Democratic Club
Washington, D.C.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA—UAW

DOUGLAS A. FRASER, PRESIDENT EMIL MAZEY, SECRETARY-TREASURER

VICE-PRESIDENTS

PAT GREATHOUSE • KEN BANNON • DENNIS McDERMOTT • IRVING BLUESTONE • ODESSA ROMER • MARC STEPP • MARTIN GERBER

IN REPLY REFER TO
1125 FIFTEENTH STREET, N. W.
WASHINGTON, D. C. 20005
PHONE: (202) 296-7484

July 26, 1977

Hon. Don Edwards, Chairman
Subcommittee on Civil and Constitutional Rights
Committee on the Judiciary
U.S. House of Representatives
407 House Annex No. 1
Washington, D.C. 20515

Dear Mr. Chairman:

I am writing to express the support of the International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW) for H.J. Res. 139 to provide full voting representation to the District of Columbia.

For decades the UAW has been concerned with the realization of participatory democracy for all our citizens. We have worked to end discriminatory practices in polling places. We have worked for passage of the Voting Rights Act. We have spent significant sums to encourage people to exercise their voting rights.

Despite all of this, there remains one place in the country where the citizens are denied the most elementary right, the right to full voting representation in the Congress. That the District of Columbia should be left in this undemocratic position is a grave example of how fragile the protection of citizens' rights truly is. Enactment of H.J. Res. 139 will provide to the residents of the District of Columbia a right which they should have never been without. It will provide them with that right belatedly. But not to pass H.J. Res. 139 would be to tell the 700,000 residents of the District that democracy does not reach within the boundaries of our nation's Capitol.

The UAW appreciates the fact that you are proceeding with hearings on this bill, and we hope it will receive prompt favorable action. Please include this letter as part of the hearing record on H.J. Res. 139. Thank you.

Sincerely,

Howard G. Paster
Legislative Director

HGP:cd

THE NEWSPAPER GUILD 1125 FIFTEENTH STREET N.W. ROOM 835 WASHINGTON D.C. 20005 202 296-2990

July 25, 1977

The Honorable Don Edwards, Chairman
House Subcommittee on Civil and Constitutional Rights
Committee on the Judiciary
Houae of Representativea
Room 407, House Office Building Aonex
Washington, D. C. 20515

Dear Mr. Edwards:

The Newapaper Guild, a labor union representing aome 40,000 newa and commercial department employees of newspapers, news aervicea, magazines and related media, wishes to register its enthusiastic support of House Joint Resolutions 139 and 142, providing full voting representation in Congress for the Diatrict of Columbia.

The Guild has been, and will continue to be, a conaistent advocate of all measures fully enfranchising the residents of the District of Columbia. We strongly believe that the inadvertent denial of full citizenship to those 750,000 Americans residing in the Diatrict is in direct contradiction to the democratic principlea on which thia nation was founded.

Therefore, the Guild encourages your action on thia legialation that ia so long overdue to provide District residenta with that which every other Americao living in the United Statea ia guaranteed: full voting represeotation in both housea of Congress.

Very truly yours,

Charles A. Perlik, Jr.
President

CAP:SBR
opeiu2afl-cio

cc: The Hon. John F. Seiberling
The Hon. Robert F. Drinan
The Hon. Harold L. Volkmer
The Hon. Anthony C. Beilensoo
The Hon. M. Caldwell Butler
The Hon. Robert McClory

THE WASHINGTON TEACHERS' UNION
2101 L STREET N.W.
ROOM 905
WASHINGTON, D.C. 20037

PHONE 452 8120
AFT

July 25, 1977

Honorable Don Edwards, Chairman
Subcommittee on Civil and
Constitutional Rights
Committee on the Judiciary
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

The enclosed presents the views of the Washington Teachers' Union, AFT, AFL-CIO, on the subject of "Full Voting Representation for Residents of the District of Columbia" as proposed in H.J. Res. 139. It is my desire to testify before the Committee on this matter, however, I am advised that the witness schedule has reached the limit for the time allotted.

You are, therefore, requested to include this statement for the record.

Respectfully,

William H. Simons AFT

William H. Simons
President

WHS/CRB:sjw
opeiu#2aflcio

THE WASHINGTON TEACHERS' UNION
2101 L STREET N.W.
ROOM 905
WASHINGTON D.C. 20037
PHONE 452-8120

July 25, 1977

Honorable Don Edwards, Chairman
Subcommittee on Civil and
Constitutional Rights
Committee on the Judiciary
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Mr. Chairman and Members of the Committee, my name is William H. Simons. This statement is presented on behalf of the Washington Teachers' Union, AFT, AFL-CIO. Our offices are located at 2101 "L" Street, N.W. and the Union, of which I am the President, is the exclusive bargainihg agent for the Teachers of the District of Columbia Public School System.

We are gratified to have the opportunity to endorse the legislative proposal H.J. Res. 139, providing full voting representation for residents of the District of Columbia. Our gratitude, Mr. Chairman, extends only to the display of concern and sensitivity by this Committee, and our District of Columbia Delegate, in pushing this issue thus far.

Following better than two centuries of Congressional mismanagement, now, our efforts may be described as exercises in anachronism and presumption — presumption that progress in things and money is real and substantive, and anachronistic, in that a people remain, even today, chained to the old enduring passions.

Historian Constance McLaughlin Green, rscounts it best in her reference to Augustus Woodward's reaction to Congressional "stripping" of local citizen participation in their Government. A Virginia born lawyer, Woodward in 1800, vigorously resisted the concept that the Constitutionally provided oversight of the District of Columbia by Congress nullified the rights of the U.S. Citizens residing here. Indeed, one of ths, then, significant arguments on the subject remains equally appropriate now, and I quote, "...the unrighteousness of reducing men in the very heart of the United States to the condition of subjects whose rulers would be independent and entirely abovs the control of the people."

With respect to Congressional representation that argument is about where we are today. It precisely describes the travesty which remains with us since the winter of 1800. The worn legacy of political unfortunates yet stifles the residents residing in this Nation's Capital.

Mr. Chairman, Washington, D.C. has been, with reason, called "The Last Colony." It is with that cynical designation that this City faces all of ths ills confronting every other urban area in ths country. And, there is more. It is without a locally controlled economy. It is without a vote of its own which acts in either chamber to advance its interests. No one bears the obligation to endorse fact rather than fiction, substance rather than myth, and actuality rather than distortion.

The fact of various other Cities' debt burdens and personnel complements is measured against the stats and local obligations of this 69 square miles municipal state. Ths results emerge from thess

offices as most profound revelations. Needless to say, this City suffers in such portrayal to the constituents in the distant voting districts.

Even now, this City's Budget must be approved by this House and the Senate. In nsither case, will our vote weigh in the debate to come. Certainly, thsre are those sufficiently courageous to treat objectively with District of Columbia matters. Both in Committees and on the floor thsy point the way to objectivs deliberation. And, we, the non-constituents, are reminded of the tribute owed. But even here, the business of their constituents must place priority demands upon their time and energies. If that is not sufficient, certainly the major issues of National and even World significance must be met.

The entire United States Congress is unwilling to explore in great depth, the Washington, D.C. Budget, balanced or unbalanced; the House and Senate memberships are unwilling to delibsrate on a precise local tax structure that will ensure a livable place here for tax payers; Congress is unwilling and, probably, incapable of commiting resources to a well defined Federal payment formula; and, the Congress is unwilling to substitute a revenue generating economy for what is referred to as an "esthetic seat of the Federal establishment". The absence of Congressional will does not diminish the local needs.

A couple of issues, recently debated in the Senate, are illustrative.

The delibsrations on the 1977 District of Columbia Budget included refsrence to the local police force being the largest in the Nation on a per capita basis. And, the justification for such a complement was felt appropriate for "ths turbulent 1960's".

Mr. Chairman, no enlightening dialogue on the subject was offered. I am not, here, suggesting rebuttal. I am suggesting informing dialogue as to how the police force rose to its present level. Succinctly, it was former President Nixon's insistence that the force incrsase to in excess of 5,000 to control the disturbances, primarily centered around protest demonstrations on National issues launched by citizens from all parts of the Nation.

But, the dialogue addressed only the ratio of police officers per thousand District of Columbia residents.

Another issue addressed dealt with City bus fares. The proposal to raise these fares from 40 csnts to 50 cents per fare during the peak hours was designed to enable the District to meet its Mstro operating deficit. Senator Mathias of Maryland argued that such detailed involvement in what is primarily a local issue — shared by the Maryland and Virginia suburbs — was not the role of the Senate. However, meritorious the proposal, I share Senator Mathias' view.

House members share in the, shall we say, misunderstanding of the District of Columbia. The most recent reference from a key House member dealt with the District's complement per thousand residents as being higher than any City in the Nation. But as long as the District of Columbia Government bears the responsibility for state functions, i.e., education, highways, penal systems, and others, a city-to-city comparison is a simple distortion of fact.

How then does the City inject its view into the decision process in the respective chambers? Does it rely on the Senator from Florida? The Congressman from Tennessee? Does it look to the honorable gentlemen from other preoccupied constituencies to speak the conscious or the needs of the District subjects?

In recent months, the White House established a Task Force numbering fourteen members, headed by the Vice President, including the Delegate to Congress from D.C.; the Mayor and the Chairman of the City Council. Whatever the criticism of the City's representation on the Task Force, there is much to be assessed in a broad array of difficulties besetting the City.

Nevertheless, ths mere fact of the necessity for such a Task Force composed primarily of non-residents argues persuasively for the need of a permanent Congressional delegation. Such a delegation would, on a continuing basis, treat with this City's ills where legislative solutions are sought. And, sincs the Federal Government weighs so heavily in local matters, such a delegation should have staff and other resources to perform this mission.

The establishment of the Task Force follows the exploration of a varied number of local problems. One of the more recent, by the Municipal Research Bureau dealt with the City's deficit. Citing the accumulation of $118.8 million in deficits for fiscal years 1973-74-75 and 76, the Bureau concludes, "...the real test that remains is whether a truly balanced budget for the City can be achieved over the longer term by making hard choices to reduce expenditures or increase taxes. There will be no easy solution."

I do not presume to argue the findings of this prestiguous research organization. But its implied alternative of extracting more revenue from a dwindling resident population is hardly a stroke of genius.

Especially is this true when compared with the findings of the Metropolitan Washington Council of Governments. Their findings point to the District's 24% of the area's population and its 82% of

the area's expenditures for welfare and social services; 68% of the area's expenditures on police and fire protection; and 39% of the spending on transportation and highways. The location of 49% of the area's low income population in Washington accents the issue very pointedly.

I am compelled to contend that the weight of these matters far exceeds the resources of the Mayor and the Council or even the single voiceless Delegate to the House of Representatives.

In essence, there is no Washington, D.C. delegation to undertake these chores; to suggest to the entire Congress that these too are issues of importance to a segment of the United States citizenry. And, in the absence of such a delegation of members in both the House and Senate the rhetorical question is, "Why should the busy membership undertake the added obligation to sort out the details of Washington, D.C.'s political and economic survival?"

This question of full representation rests upon all of these unfulfilled commitments. But, written into the Preamble to the Constitution of the United States of America is the following:

> We The People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

Respectfully submitted,

William H. Simons

William H. Simons
President

WHS/CRB:sjw
opeiu#2aflcio

LEAGUE OF WOMEN VOTERS OF THE DISTRICT OF COLUMBIA
ROOM 730 DUPONT CIRCLE BUILDING
1346 CONNECTICUT AVENUE, N. W.
WASHINGTON, D. C. 20036
785-2616

September 16, 1977

The Honorable Don Edwards, Chairman
The Subcommittee on Civil and Constitutional Rights
The Committee on the Judiciary
The House of Representatives
Washington, D. C. 20515

Dear Mr. Edwards:

May we request that the enclosed statement from the League of Women Voters of the District of Columbia supporting House Joint Resolutions to provide the District of Columbia with full voting representation in the U.S. Congress be made part of the record of the Hearings now in progress before your Subcommittee on Civil and Constitutional Rights?

Sincerely yours,

Ellyn W. Swanson

Ellyn W. Swanson
President

Enclosure

LEAGUE OF WOMEN VOTERS OF THE DISTRICT OF COLUMBIA

ROOM 730 DUPONT CIRCLE BUILDING
1346 CONNECTICUT AVENUE, N. W.
WASHINGTON, D. C. 20036
785-2616

September 16, 1977

The Honorable Don Edwards, Chairman
The Subcommittee onCivil and Constitutional Rights
The Committee on the Judiciary
The House of Representatives
Washington, D. C. 20515

Dear Mr.Edwards:

Enclosed is a copy of the statement in support of full voting representation in Congress for the District of Columbia which has been submitted for the record by the League of Women Voters of the District of Columbia.

We are very pleased that Mrs. Ruth Clusen, President of the League of Women Voters of the United States will be testifying at the Judiciary Subcommittee Hearings on September 21 in behalf of League members throughout the country.

Sincerely yours,

Ellyn W. Swanson

Ellyn W. Swanson
President

Encl: Statement
cc. Committee Members

LEAGUE OF WOMEN VOTERS OF THE DISTRICT OF COLUMBIA
1346 Connecticut Avenue, N. W. Room 730
Washington, D. C. 20036

STATEMENT OF THE LEAGUE OF WOMEN VOTERS OF THE DISTRICT OF COLUMBIA ON D.C. REPRESENTATION IN CONGRESS: SUBMITTED TO THE SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL, RIGHTS, HOUSE COMMITTEE ON THE JUDICIARY

September 16, 1977

As President Carter has seid, "I have no new dream to set forth today but rather urge e fresh faith in their old dreams."

> "We hold these truths to be self-evident, thet all Men are created equal, that they ere endowed by their Creator with certain inalienable rights, that among these are Life, Liberty and the Pursuit of Happiness - that to secure these Rights, Governments are instituted among Men deriving their just powers from the Consent of the Governed..."

The Declaration of Independence continues to assert that the Right of Representation in the Legisleture is an "inestimable" right. But Americens residing in the District of Columbia are governed without their consent, ere denied their inestimable right.

Our country is a lsnd "of the people, by the people, end for the people". But Americans living in the District of Columbie are denied voting representation in Congress.

"Taxation without Representation is Tyranny" rang true in the 1770s. But in 1977, Americans living in the District of Columbie pay their full share of federal taxes and are denied voting representation in Congress.

Three-quarters of a million Americans are disenfranchised because our home city is the capital of our democratic nation.

- -

The League of Women Voters of the District of Columbia eppreciates the opportunity to submit this statement supporting House Joint Resolutions providing for s constitutional amendment whereby D.C. citizens may gain full voting representation in both Houses of Congress.

In our view, full voting representation for the District of Columbie means certain things which ere catalogued briefly below:

> First, full voting representation for the District of Columbia is in eccordanca with the democratic principles of our system of government and our evolving political tradition.
>
> It means that Americans living in the Nation's Capital would regain a frsnchise they once held in the early days of this nation.
>
> It means that the American taxpayers resident in the District would have voting voices in the federal body which makes the laws governing all Americans. (By the 1970 census, D.C. has a population larger than that of each of 10 states).

With representation in both the Senate and the House, D.C. citizens would have an equitable voting voice in areas of vital national interest such as treaties, appointment of high officials, and revenue matters, and in areas of local concern such as appointment of our local judges, appropriation of our budget, snd Congress's power to veto our legislation.

The tradition of the Federal District to serve as the seat of the Federal Government would continue.

Americans moving into the nationa's capital would no longer lose their full frsnchise as Americnas.

On the other hand, full voting representation does not mean a number of things, which also should be discussed:

It does not mean that there is a Constitutional contradiction; the Constitution does not forbid such representation for the District of Columbia.

It does not conflict with Article V of the Constitution, which says that "...no state, without its consent, shall be deprived of equal representation in the Senate". Each state would still maintain its same standing vis-a-vis other states, as has happened with the admission of each new state through the years.

Voting representation for D.C. in the House does not necessarily reduce the power of the states in the House. Such power has always been shared by addition of new states to the Union. Also, representation in the House is adjusted after each census, and the House can increase its size if it so chooses.

Full voting representation would not make D.C. a state.

Representation in Congress for D.C. is unrelated to "home rule", a portion of which was granted to the District by the 93rd Congress. Representation is a right granted to American citizens to have a voice in the legislature which taxes them, drafts their citizens into the military forces, and approves treaties that affect American citizens regardless of where they live.

Representation for D.C. does not prejudge the question of representation for U.S. territories and the Commonwealth of Puerto Rico. These are separate and separable matters. The District of Columbia is not a territory; it is a unique entity mandated by the Constitution, its area was part of the original thirteen colonies, and its residents have always been taxpaying American citizens.

In sum, full voting representation for the District of Columbia is in accordance with the democratic principles expressed in the Declaration of Independence, written into the Constitution, and enlarged in several amendments enfranchising black men, all women and eighteen year-olds. While these latter inclusions were not in the scope of thinking of the founders of our nation, they are part of an evolving political tradition. Conversely, we here are asking for a franchise

which apparently was envisioned by the writers of the Constitution but omitted in the press of concerns of constituencies already in existence.

We are asking for an amendment in the spirit of the Constitution, not overturning the original concept of a capital city. Generations of native Washingtonians have a long tradition of pride in serving their nation's needs in its bureaucracy, and as hosts to other citizens who come as tourists or to petition their government.

We also ask for this amendment for the sake of those citizens who come to serve their government, or who are brought here by business interests and are shocked to find they have lost the rights of Congressional representation they believed to be their right as Americans. We ask for this amendment for the sake of our image in the world, that our country might not be called cynical and hypocritical, denying its capital district the rights for which we press in other countries.

Thus, the D.C. League of Women Voters emphatically supports full voting representation for D.C., as we have for over 50 years. Nothing has changed our conviction that such representation is just and right. We are pleased that both the Republican and Democratic party platforms support this goal, and we hope that the goal may become a reality through the principled action of this Congress. We applaud the efficiency of the new resolutions embracing in one package D.C.'s representation in Congress. election of the President and Vice President, and ratification of future amendments to the Constitution, and repealing the discriminatory, unequal 23rd Amendment.

TESTIMONY BY J. C. TURNER

GENERAL PRESIDENT, INTERNATIONAL UNION OF OPERATING ENGINEERS
FORMER PRESIDENT, GREATER WASHINGTON CENTRAL LABOR COUNCIL
FORMER D. C. CITY COUNCILMAN, 1967 - 1968

BEFORE THE SUBCOMMITTEE ON
CONSTITUTIONAL RIGHTS AND CIVIL RIGHTS OF THE
COMMITTEE ON THE JUDICIARY

AUGUST 3, 1977

Mr. Chairman, I come before you today representing the interests of 5,000 Operating Engineers who live in Washington, D. C., and 425,000 members of the International Union of Operating Engineers all across the country. I have been politically active in Washington for 40 years, and for 40 years I have worked to expand the political rights of District residents. We have seen some change -- it has been a slow, tedious process, but we finally won a partial home rule. Now we must have full voting participation in the U. S. House and the Senate. I urge your support of H.J. Res. 139 for a constitutional amendment granting the District of Columbia full State status for the purpose of determining Congressional Representation.

We in the labor movement believe that responsible government in a democracy must be accountable, accessible and responsible to the people it is intended to serve. We believe that full voting representation in Congress is essential for the achievement of responsible government in our nation's capital city.

We support full voting representation in the House and Senate according to the apportionment formula which would apply if the District were a State. We recognize that the District is not a State, but it must be treated as such for the purpose of Congressional Representation if District residents are to be afforded the same political status of the residents of the 50 States.

The credibility of our political and governmental institutions has been severely tested by the course of recent events. We must seize every opportunity to restore confidence in government by bringing the practice of government more in line with the democratic philosophy and ideals of our federal republic. What better place to contribute to the resurrection of that spirit, than in the District of Columbia -- the seat of our national government.

During the past decade and a half, Congress has responded on several occasions to the continuing concern for more responsible government in the District. The enactment of the 23rd Amendment in 1961, the Reorganization Plan of 1967, the provision for an elected school board in 1968, the nonvoting delegate bill in 1970, and enactment of home rule legislation in 1973, were all in response to the second-class status of the District and the need for reform.

Each of these legislative actions was progressive. However, they have not reduced the political inequity inherent in denying District residents equal representation in Congress.

In addition to the moral and political inequity inherent in the lack of equal representation there is a very real burden placed on District residents by not having elected and voting Senators and Congressmen. For, in addition to voting on the vital issues of the day, Congressmen and Women serve a critical role in helping solve personal problems of constituents. Congressmen and their aids help constituents find their way through the quagmire of the Federal bureaucracy on items of personal importance. Often help is sought by a social security recipient whose check is late, or a veteran who is not receiving benefits.

But District residents receive only help from one nonvoting Congressman on these very real problems.

The time has come for Congress and the States to say to three-quarter of a million D. C. residents "You are no longer second-class citizens."

I urge you to pass H.J. Res. 139 and to work vigorously for its passage on the Floor.

Thank you for your consideration of this crucial issue.

JEWISH COMMUNITY COUNCIL
1330 MASSACHUSETTS AVE., N.W., WASHINGTON, D.C. 20005 • (202) 347-4628
OF GREATER WASHINGTON

JUL 22 July 20, 1977

Honorable Don Edwards
2329 Rayburn House Office Building
Washington, D.C.

Dear Congressman Edwards:

We understand that the Subcommittee on Civil and Constitutional Rights of the House Judiciary Committee, of which you are Chairman, is beginning hearings on House Judiciary Resolution 139 which provides for a constitutional amendment granting the District of Columbia two senators and a proportional number of representatives.

The Jewish Community Council, the representative body of over 180 affiliated Jewish organizations, synagogues and institutions in Maryland, Virginia and the District of Columbia requests that the enclosed statement in support of full voting representation in the Congress for District residents, be duly noted and included in the hearings record.

We also request that a copy of our statement be circulated among the other subcommittee members if possible. Thank you for your attention to this matter.

Sincerely yours,

Bernard S. White

BERNARD S. WHITE
President

BSW:eb
enclosure
cc: Delegate Walter Fauntroy

CONSTITUENT ORGANIZATIONS
JEWISH COMMUNITY COUNCIL OF GREATER WASHINGTON

Achduth
Ades Israel Congregation
Ades Israel Congregation Men's Club
Ades Israel Congregation Sisterhood
Agudes Achim Congregation, Va.
Agudath Achim Congregation
Alpha Omega Fraternity
American Jewish Committee
American Jewish Congress
American Technion Society
American Technion Society — Woman's Division
Arlington-Fairfax Jewish Congregation
Arlington-Fairfax Jewish Congregation Sisterhood
Association of Americans and Canadians for Aliyeh
Beth El Hebrew Congregation, Va.
Bath Sholom Congregation
Beth Sholom Congregation Ladies Auxiliary
Bath Tikva Congregation
Beth Torah Congregation
Bath Torah Congregation Sisterhood
Bethesda-Chevy Chase Jewish Community Group
Bethesda Jewish Congregation
B'nai B'rith
- National Capital Association of B'nai B'rith Lodges
- Argo Lodge #413
- Bethesda-Chevy Chase Lodge #2917
- Free Stata Lodge #2379
- Independence Lodge #1776
- Isadore Gudelsky Lodge #2540
- John F. Kennedy Lodge #2484
- Metropolitan Lodge #2881
- Montgomery Lodge #1499
- Nathan Rich Lodge #2333
- Wheaton/Heritage Lodge #2146
- Cardoza Lodge, Virginia

B'nai B'rith Woman — Mid-Atlantic Region
Congressional Council
- Argo Chapter
- Business & Professional Chapter
- Max Kroloff Chapter

Tri-County Council
- Abram Simon Chapter
- Blair Chaptar #1247
- Free State Chapter
- Prince Georges County Chaptar

BB/BBW — Hebrah Unit
B'nai B'rith Career and Counseling Services
B'nai B'rith Hillel Foundations
- American, Georgetown, and Gallaudet Universities
- George Washington University
- University of Maryland

B'nai Israel Congregation
B'nai Israel Congregation Men's Club
B'nai Israel Congregation Sisterhood
B'nai Akiva Gelil
Cantors Association of Greater Washington
Chaim Weizmann School
Chavruthe
Club Shalom
Combined Congregations of Greater Washington
Congregation Beth El of Montgomery County
Congregation Har Shalom
Congregation Har Tzeon
Congregation Olem Tikvah
Congregation Sheara Tikvah
Congregation Shaare Tikvah Sisterhood
Council of Single Jewish Adults
Ezras Israel Congregation
Free Sons of Israel—
Col. Oavid Mercus Lodge #211
Gaithersburg Hebrew Congregation
George Washington Lodge #24
George Washington Lodge Ladies Auxiliary
Hadassah
- Greater Washington Area Chaptar
- Aliyeh Group
- Anne Frank Group
- Aviva Group
- Bialik Group
- Bowie Chaptar
- Herzl Group
- Ilan Group
- Kadimah Group
- Kallah B & P Group
- Kinneret Group
- Modin Group
- Northern Virginia Chapter
- Sabra/Scopus Group
- Shalom Group
- Tikvah Group

Hebraw Academy of Greater Washington
Hebrew Academy Ladies Auxiliary
Hebrew Aid Circle
Habraw Home of Greater Washington
Hebraw Home of Greater Washington: Women's Auxiliary
Hebraw Home of Greater Washington Men's Club
Israel Histadrut Council of Greater Washington
Jacobi Medical Society
Jewish Activist Front
Jewish Athletic & Cultural Association
Jewish Community Center of Greater Washington
Jewish Council for the Aging of Greater Washington, Inc.
Jewish Council for the Aging Auxiliary
Jewish Day School of Greater Washington
Jawish Educators' Association
Jawish Historical Society of Greater Washington
Jewish Identity Project
Jewish Social Service Agency
Jewish Student Association of Georgetown University
Jewish War Veterans
- Department of D. C.
- Ladies' Auxiliary, Department of D. C.
- Post #58
- Post #58 Auxiliary
- Post #381
- Post #386
- Post #589
- Post #692
- Post #1777

Kesher Israel Congregation
Labor Zionist Alliance
- American Hebonim Association Chapter
- Farband Chapter

Magen David Sephardic Congregation
Mishkan Torah Congregation
Mizrachi Women of America
- Bireh Chapter
- Washington Seniors Chapter

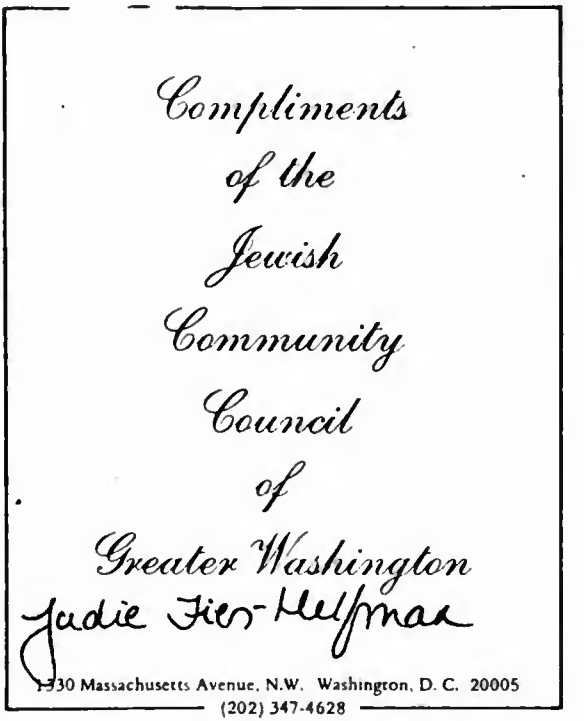
Mt. Lebanon Cemetery Association
National Children's Center
National Council of Jewish Women
- Montgomery County Section
- Northern Virginia Section
- Washington, D. C. Section

Navey Shalom Congregation
Northern Virginia Hebrew Congregation
Ohev Sholom Talmud Torah Congregation
Ohr Kodesh Congregation
Ohr Kodesh Congregation Sisterhood
(Washington Men's) ORT
(Woman's American) ORT
- Greater Washington Region
- Silver Spring Chapter
- White Oak Chapter

Pioneer Women
- Pioneer Women Council
- Blue Club
- Braisheet
- Club No. 1
- Dimona Club
- Golda Meir Club
- Hanita Club
- Hatikvah Club
- Medina Club
- Ruach Club

Progressive Women's Club
Reconstructionist Havureh of Greater Washington
Religious Zionists of America (Mizrachi-Hapoal Hamizrachi)
Sheare Tafile Congregation
(American Committee for) Sheare Tzedek Hospital — Washington, D.C. Region
Shomrim Society of Greater Washington
Silver Spring Jewish Center
Southeast Hebrew Congregation
Southeast Hebrew Congregation Ladies Auxiliary
Temple Beth Ami
Temple Emanuel
Temple Israel
Temple Israel Sisterhood
Temple Micah
Temple Rodef Shalom
Temple Shalom
Temple Sinai
Temple Sinai Brotherhood
Temple Sinai Sisterhood
Temple Solel
Tiferath Israel Congregation
Union of Orthodox Jewish Congregations, Woman's Branch
United Order of True Sisters, Inc.
United Synagogue of America (Seaboard Region)
Washington Board of Rabbis
Washington Committee for Soviet Jewry
Washington Hebrew Congregation
Washington Hebrew Congregation Brotherhood
Washington Hebrew Congregation Sisterhood
Washington Zionist Federation
Workmen's Circle
- Branch 92
- Branch 494-E

Young Israel Shomrei Emuneh of Greater Washington
Young People's Synagogue
Zionist Organization of America — Louis D. Brandeis District


Compliments
of the
Jewish
Community
Council
of
Greater Washington
Judie Fier-Hellman
1730 Massachusetts Avenue, N.W. Washington, D. C. 20005
(202) 347-4628

JEWISH COMMUNITY COUNCIL
1330 MASSACHUSETTS AVE., N.W., WASHINGTON, D.C. 20005 ☎ (202) 347-4628
OF GREATER WASHINGTON

July 20, 1977

Honorable Don Edwards
2329 Rayburn House Office Building
Washington, D.C.

Dear Congressman Edwards:

We understand that the Subcommittee on Civil and Constitutionsl Rights of the House Judiciary Committee, of which you are Chairman, is beginning hearings on House Judiciary Resolution 139 which provides for a constitutional amendment granting the District of Columbia two senators and a proportional number of representatives.

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We also request that a copy of our statement be circulate among the other subcommittee members if possible. Thank you for your attention to this matter.

Sincerely yours,

Bernard S. White

BERNARD S. WHITE
President

BSW:eb
enclosure
cc: Delegate Walter Fauntroy

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JEWISH COMMUNITY COUNCIL
1330 MASSACHUSETTS AVE., N.W., WASHINGTON, D.C. 20005 • (202) 347-4626
OF GREATER WASHINGTON

STATEMENT ON H.J. 139

BEFORE THE

SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS

HOUSE JUDICIARY COMMITTEE

July 25, 1977

The Jewish Community Council of Greater Washington, the representative and coordinating body of over 180 Jewish organizations in Maryland, Virginia, and the District of Columbia has, for more than 25 years, endorsed and advocated the principle of full home rule for the District of Columbia.

The Jewish Community Council believes that one of the fundamental rights of American citizenship is the right of every citizen to elect his or her own governmental representatives. The Council further believes that such representation for citizens of the District of Columbia should be the same as that of all other American citizens.

However, in the District of Columbia - a city which serves as a world-wide symbol of freedom and democracy, as well as the seat of representative government in the United States - citizens are denied the right to elect, and thereby hold accountable, their

national representatives.

Although Article I, Section 8, of the United States Constitution provides that the District of Columbia will be the "exclusive legislative jurisdiction" of Congress, nowhere does it provide for the denial of Congressional representation for the District's citizens. There is strong evidence that this denial is the result of historical oversight -- the framers of the Constitution simply did not envision the growth of the nation's Capital into the major city it is today.

Moreover, in Federalist Paper No. 43, James Madison referred to the necessity of providing for the "rights and consent of the citizens" who were to inhabit the Federal District. In the same passage, he asserted in principle the right of federal district residents to have a "voice in the election of the government which is to exercise authority over them".

There are ten states (New Hampshire, Idaho, Montana, South Dakota, North Dakota, Delaware, Nevada, Vermont, Wyoming, Alaska) with fewer residents than the District which have a total of 34 Members of Congress. On a per capita basis, there is one voting Member of Congress for every 143,000 citizens in those states, compared to one non-voting Delegate for the 750,000 citizens in the District of Columbia. To compound this irony, tax receipts from District residents represent a high proportionate share of federal revenues -- a clear example of taxation without representation.

Citizens of our nation's capital are required to assume all of the obligations and responsibilities of citizenship. Yet, they are denied the concomitant privileges and benefits of such citizenship. America was founded on the principle that each citizen should have a voice in the direction of government. Government was to draw its power from the consent of the people. Our country has extolled the virtues of our democratic system throughout the world, yet the District is not represented in our own national legislature. Of course Washington, D.C. is a unique city. It is the seat of the Federal Government and the setting for numerous national monuments. Too often, however, the 750,000 people who make their homes and live their lives here have been forgotten as they have repeatedly been denied voting representation.

Since 1800, voting representation for the District of Columbia has been considered 23 times. Support for voting representation has been bi-partisan and every President since 1915 has made a public statement in favor of it. More recently, both the national Democratic and Republican Party platforms have advocated voting representation for the District.

H.J. 139 is an indispensable first step to providing District residents with the opportunity to elect national representatives. We commend Congressman Fauntroy for introducing this legislation and urge its adoption by the House Judiciary Committee. The Jewish Community Council of Greater Washington is most grateful for the opportunity to reaffirm its support for full voting representation for

District residents. We have long believed that the right to elect representatives is the heartbeat of democracy. Without it, democracy rings dull, lifeless and ineffective.

Submitted by

JEWISH COMMUNITY COUNCIL OF
GREATER WASHINGTON
1522 K Street, NW, Suite 920
Washington, D.C. 20005

STATEMENT OF CHARLES ALAN WRIGHT

My name is Charles Alan Wright. I am Charles T. McCormick Professor of Law at The University of Texas. For more than 25 years I have been a law teacher, at the University of Minnesota from 190 to 1955 and at The University of Texas sioce tbat time. I was a visitiog professor at the University of Pennsylvania Law School io 1959-60, at the Harvard Law School io 1964-65, and at the Yale Law School io 1968-69. I regularly teach courses io Federal Courts and in Constitutiooal Law aod offer a semioar on the Supreme Court. I have written extensively oo constitutional law and on other legal matters.

At the request of the staff of the Subcommittee oo Civil and Coostitutional Rights, I have examined House Joint Resolutions 139, 392, and 554. I have also read the committee report and the floor debate in the 94th Congress on what was theo H.J.Res. 280.

I have no doubt that if the citizeos of the District of Columbia are to be giveo representation in Congress, a constitutional amendment will be required. Representatioo could, of course, be achieved by ceding the District back to Maryland, but this would completely destroy the uoique character of the District, a character that was contemplated by the Framers and that the country has come to accept. Both the precedent that was set wheo a portioo of the District was ceded back to Virginia and the implicatioos of Article IV, § 3, persuade me that the consent of the Maryland legislature would be required, and I would be troubled also on how to read the Twenty-Third Amendment if legislatioo were to wipe out the District.

Nor can I take seriously the possibility that the citizens of the District could be authorized by statute to vote in Maryland while remaining citizens of the District for all other purposes. It would be difficult -- indeed, I think impossible -- to reconcile this with the language of Article 1, § 8, giving Congress power "To exercise exclusive Legislation in all Cases whatsoever, over such District" or with the provision of § 2 of the Fourteenth Amendment that "[r]epresentatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State * * *." The fact that citizens of the District apparently voted in Maryland in the 1800 election is not enough to overcome the constitutional provisions I have cited, the long practice to the contrary since 1800, and the acceptance of the present practice in the Constitution by the adoption of the Twenty-Third Amendment.

House Joint Resolution 554 differs in two significant respects from H.J.Res. 139 and H.J.Res. 392. First, it would repeal the Twenty-Third Amendment and give the District of Columbia the representation in the Electoral College to which its population would entitle it if it were a state, and apparently would give the District a voice in the ratification of constitutional amendments, though it is unclear how this would be exercised. The other two resolutions preserve in terms the limited representation in the Electoral College that the 1961 amendment provides. Second, H.J.Res. 554 provides only that for certain stated purposes the District "shall be treated as though it were a State," while the other two resolutions spell out what the District is being given.

Whether the Twenty-Third Amendment should be retained or repealed seems to me wholly a question of policy, rather than of constitutional law. If the country should agree to amend the Constitution it may specify, one way or the other, the extent to which the District is to be represented in the Electoral College and no constitutional problem is presented.

On the other point, however, it seems to me that as a matter of drafting Resolutions 139 and 392 are decidedly preferable to 554. Although the legislative history will be clear, and the risk of any complication arising is minimal, it seems to me clearly desirable that a constitutional amendment spell out what it is doing rather than accomplishing this by indirection and introducing the anomaly that the District is to be "treated as though it were a State" for some purposes but not for others.

As between Resolutions 139 and 392 the only difference is that the latter makes provision for filling vacancies by appointment if at some future time Congress should allow the District to have its own elected legislature and executive. The former does not, and it it were adopted there would always be vacancies in the District's representation in Congress until an election could be held if a Representative or Senator from the District should die or resign. I see no constitutional issue in the choice between these two resolutions. As a matter of policy, it would seem desirable, and consistent with the general purposes of all of these resolutions, to provide a mechanism for continuous representation, such as is authorized for the states in terms of Senate seats by the Seventeenth Amendment, but even that provision is permissive only, there is no corresponding provision for Representatives in Article 1, § 2, and unless

there is a significant possibility that Congress will at some point allow self-government to the District the final six lines of § 2 of H.J.Res. 392 will be surplusage.

An unsigned memoradum of August 3, 1977, entitled "Hearing Issues in D.C. Representation," with which I have been provided by the Subcommittee's staff asserts that H.J.Res. 554 would give the people of the District the power to set the qualifications for voters. This seems doubtful to me. The language "and as shall be provided by the Congress," in § 2 of that resolution seems to me to preserve the veto power Congress would have under the other two resolutions by the "exclusive Legislation" provision of Article 1, § 8. In any event, there may be an advantage in reserving to Congress the power to set voter qualifications. The Fifteenth, Nineteenth, and Twenty-Sixth Amendments all speak of "the United States or by any State." It is inconceivable that the District would disenfranchise voters on the basis of race, sex, or being only 18, but so long as Congress is setting the qualifications it is clear that these amendments would be applicable. This would be far from clear if the District, which is not a state, were empowered to act on its own.

I do not think that the obsolete provision of Article 1, § 4, would prevent Congress from prescribing the place where Senators from the District are to be chosen. That provision speaks to the relation between Congress and the States. Once again the District is not a state, and Article 1, § 8, gives Congress ample power to make regulations for the District that it could not make for states.

The only significant constitutional issue posed by any of these resolutions is whether ratification by all 50 states would be required

in view of the final clause of Article V. On this issue there is literally no law. Although the Nineteenth Amendment was attacked on the ground that a state that had not ratified that amendment would be deprived of its equal representation in the Senate because its Senators would be persons not of its own choosing, since women would participate in the choice, the Supreme Court thought this argument not worth even mentioning in its opinion sustaining that amendment. Leser v. Garnet, 258 U.S. 130 (1922). So far as I know that is the only case in which any contention has been made based on the "equal Suffrage" clause of Article V.

In the absence of any relevant case law, all one can do is attempt an informed prediction. My prediction is that any challenge to these proposed amendments based on the "equal Suffrage" clause would fail. It seems to me that the clear purpose of that clause was to ensure that the Great Compromise would not be undone and that representation in the Senate would not be put on the basis of population. That purpose is not compromised by allowing the District to have two Senators anymore than it is when a new state is admitted. I understand that a reasonable argument for a contrary position can be made, but I cannot believe it would prevail.

I have endeavored to limit myself in this statement to questions of constitutional law that have been posed about these proposed amendments. Whether it is desirable as a matter of policy to give the District of Columbia representation in Congress or to preserve its present status is a matter on which I express no opinion.

O